



Clarifying the Scope of Scottish Income Tax Powers

Technical Note
30 November 2016

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The Scotland Bill received Royal Assent on 23 March 2016 and became Scotland Act 2016. Scotland Act 2016 builds on the power to set a Scottish rate of income tax, devolved by Scotland Act 2012, by devolving further income tax powers to the Scottish Parliament.

The further income tax powers in Scotland Act 2016 provide the Scottish Parliament with full freedom to set the income tax rates and limits applicable to Scottish taxpayers on their non-savings and non-dividend income. This power will commence from 6 April 2017.

This Technical Note maintains existing policy and builds on related legislative amendments already in place (to accommodate the Scottish rate of income tax), to clarify:

- the manner in which the further income tax powers, devolved by Scotland Act 2016, interact with other areas of the income tax system; and
- the resulting consequential changes to legislation that are required to achieve this.

If you have any comments on the note or the draft consequential amendments, please send these by 31 December 2016 to:

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Scottish income tax powers

1. The Scottish rate of income tax, as introduced by the Scotland Act 2012, is charged on the non-savings and non-dividend income of those defined as Scottish taxpayers. The rate paid by Scottish taxpayers is calculated by reducing the basic, higher and additional rates of income tax levied by the UK Government by 10 pence in the pound and adding a new Scottish rate set by the Scottish Parliament.
2. On 11 February 2016 the Scottish Parliament set the Scottish rate at 10% for the 2016/17 tax year, meaning that the Scottish basic, Scottish higher and Scottish additional rates applicable to Scottish taxpayers were the same as rates applicable to taxpayers elsewhere in the UK.
3. The Scotland Act 2016 devolves further income tax power to the Scottish Parliament, allowing it full flexibility over the income tax rates and limits applicable to Scottish taxpayers. A zero per cent rate may be set but a rate must also be designated as the Scottish basic rate.
4. The further income tax powers commence on 6 April 2017 and the Scottish Government will announce its proposed rates and limits for the 2017/18 tax year in their draft budget on 15 December 2016.
5. The Scotland Act 2016 does not alter either the definition of a Scottish taxpayer or the income to which Scottish rates apply (non-savings, non-dividend). All aspects of the income tax base, for example reliefs, allowances (including the personal allowance) and the definition of taxable income remain reserved matters.

Scotland Act 2016 Income Tax powers - interaction with other aspects of income tax

Summary

The Government set out its policy for the manner in which various aspects of the income tax regime interact with the Scottish rate of income tax in Technical Notes published in May 2012 and December 2014.

The Government confirms that the policy set out in those Technical Notes remains unchanged for the devolution of Scotland Act 2016 income tax powers.

All aspects of income tax therefore interact with the further, Scotland Act 2016, income tax powers in the same manner that they currently interact with the Scottish rate of income tax.

Detail

Scottish income tax powers have implications for a number of areas of income tax, particularly those which reference specific rates of income tax, the vast majority of which are to references to basic rate.

The Scotland Act 2016 requires the Scottish Parliament to maintain a Scottish basic rate and all areas of income tax legislation which reference basic rate have already been amended, to include Scottish basic rate, to facilitate the Scottish rate of income tax. No further consequential amendment is therefore required to accommodate Scotland Act 2016.

The remaining areas of income tax for which further Scottish income tax powers have implications are mainly therefore those which reference rates of tax other than the basic rate. In such cases consequential amendment is required to ensure the continuing unchanged operation of such areas (for example, gift aid and relief at source pensions) should the Scottish Parliament choose to move away from the basic, higher, additional rate band structure that currently applies in the UK.

Regulations giving effect to these consequential amendments will be made prior to the start of the 2017/18 tax year. A draft of these regulations is contained in the following chapter.

Previous Technical Notes

Technical Notes, setting out the Government's policy intentions in areas where the Scottish rate of income tax interacted with other areas of the income tax system, were published in May 2012 and December 2014.

<http://webarchive.nationalarchives.gov.uk/20140603114240/http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>

<https://www.gov.uk/government/publications/clarifying-the-scope-of-the-scottish-rate-of-income-tax-technical-note>

The consequential legislative amendments that gave effect to the Government's policy intentions were made in Finance Act 2014 and two 2015 Statutory Instruments.

<http://www.legislation.gov.uk/ukpga/2014/26/schedule/38/enacted>

<http://www.legislation.gov.uk/uksi/2015/1810/contents/made>

<http://www.legislation.gov.uk/uksi/2015/1667/contents/made>

Draft legislation

Draft Regulations laid before House of Commons under section 15(12) of the Scotland Act 2016, for approval by resolution.

STATUTORY INSTRUMENTS

2016 No.

INCOME TAX

THE SCOTLAND ACT 2016 (INCOME TAX CONSEQUENTIAL AMENDMENTS) REGULATIONS 2016

Made - - - - - *******

Coming into force in accordance with regulation 1

A draft of these Regulations was laid and approved by the House of Commons in accordance with section 15(12) of the Scotland Act 2016⁽¹⁾.

The Treasury, in exercise of the power conferred by section 15(8) and (9) of the Scotland Act 2016 makes the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Scotland Act 2016 (Income Tax Consequential Amendments) Regulations 2016 and come into force on the day on which they are made.

(2) The amendments made by these Regulations have effect in relation to the tax year appointed by the Treasury under section 13(15)⁽²⁾ of the Scotland Act 2016 and subsequent tax years.

Amendments to the Finance Act 2004

2. Part 4 (pension schemes etc.) of the Finance Act 2004⁽³⁾ is amended as follows.

3.—(1) Section 192⁽⁴⁾ (relief at source) is amended as follows.

(2) In subsection (4)—

- (a) for “the Scottish higher rate”, substitute “or”, and
- (b) omit “or the Scottish additional rate”.

⁽¹⁾ 2016 c. 11.

⁽²⁾ S.I. 2016/xxx appointed the tax year 2017-18 as the first tax year in respect of which the Scottish Government may exercise the power contained in Section 80C of the Scotland Act 2016.

⁽³⁾ 2004 c. 12.

⁽⁴⁾ Section 192 was amended by paragraph 11 of Schedule 2 to the Finance Act 2009 (c. 10), Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3) and S.I. 2015/1810.

(3) After subsection (4) insert —

“(4A) Where—

- (a) the individual is a Scottish taxpayer for a tax year,
- (b) (apart from this section) income tax is chargeable in respect of any part of that individual’s total income for the tax year at a Scottish rate⁽⁵⁾, and
- (c) that rate is higher than the Scottish basic rate for that year,

on the making of a claim, the Scottish basic rate limit, and any other Scottish rate limit for the tax year in the individual’s case are increased by the amount of the contribution.”.

4.—(1) Section 227⁽⁶⁾ (annual allowance charge) is amended as follows.

(2) In subsection (4A)—

- (a) in paragraph (a) omit “or, in the case of a Scottish taxpayer, the Scottish basic rate”.
- (b) in paragraph (b) omit, “or, in the case a Scottish taxpayer, the Scottish higher rate”.
- (c) in paragraph (c) omit, “or, in the case of a Scottish taxpayer, the Scottish additional rate”.

(3) At the end of subsection (4A) insert—

“But subsection (4AA) applies in the case of a Scottish taxpayer.”.

(4) After subsection (4A) insert—

“(4AA) The appropriate rate for a Scottish taxpayer is—

- (a) where the only Scottish rate is the Scottish basic rate (the “SBR”), that rate, or
- (b) where there is more than one Scottish rate—
 - (i) the SBR in relation to so much (if any) of the chargeable amount as, when added to the individual’s reduced net income for the tax year, does not exceed the Scottish basic rate limit (“SBRL”) for the tax year,
 - (ii) the next highest rate after the SBR in relation to so much (if any) of the chargeable amount as, when so added, exceeds the SBRL for the tax year but does not exceed the rate limit for that rate for the tax year, and
 - (iii) where applicable, any other higher Scottish rate in relation to so much (if any) of the chargeable amount as, when so added, does not exceed the rate limit for that rate for the tax year.”.

(5) For subsection (4C) substitute—

“(4C) Where—

- (a) the basic rate limit,
- (b) the higher rate limit,
- (c) the Scottish basic rate limit, or
- (d) any other Scottish rate limit

is (in accordance with section 192 of this Act or section 414 of ITA 2007) increased in the case of the individual, the references to the limit in subsections (4A) and (4AA) are to the limit as so increased.”.

5.—(1) Section 237B⁽⁷⁾ (liability of scheme administrator) is amended as follows.

⁽⁵⁾ “Scottish rate” is defined for the purposes of the Income Tax Acts in section 989 of the Income Tax Act 2007.

⁽⁶⁾ Section 227 was amended by section 3(40) of the Finance Act 2011 (c. 11), paragraph 63(5) of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30) and S.I. 2015/1810.

⁽⁷⁾ Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 and amended by S.I. 2015/1810.

- (2) In subsection (4)—
- (a) in paragraph (a) omit—
 - (i) “or the Scottish additional rate”, and
 - (ii) “or in the case of a Scottish taxpayer, the Scottish additional rate”,
 - (b) in paragraph (b) omit—
 - (i) “or the Scottish higher rate”, and
 - (ii) “or, the case of a Scottish taxpayer, the Scottish higher rate,”
 - (c) in paragraph (c) omit “or, in the case of a Scottish taxpayer, the Scottish basic rate”, and
 - (d) at the end of the subsection insert “But subsection (4A) applies in the case of a Scottish taxpayer”.

- (3) After subsection (4) insert—

“(4A) In the case of a Scottish taxpayer, the “relevant rate” in subsection (3)(a) means—

- (a) where the only Scottish rate is the Scottish basic rate, that rate;
- (b) where there is more than one Scottish rate—
 - (i) the highest Scottish rate in relation to so much of the excess as does not exceed the amount (if any) on which tax is chargeable in the case of the individual at that rate by virtue of section 227(4AA)(b)(ii) or (iii),
 - (ii) the next highest Scottish rate, in relation to so much of the excess as is not within sub-paragraph (i) and does not exceed the amount (if any) on which tax is so chargeable by virtue of section 227(4AA)(b)(i), (ii) or (iii),
 - (iii) if there is one, the next highest Scottish rate, in relation to so much of the excess as is not within sub-paragraph (i) or (ii) and does not exceed the amount (if any) on which tax is so chargeable by virtue of section 227(4AA)(b)(i), (ii) or (iii),

and so on.”

6. In section 279(1)⁽⁸⁾ (other definitions) after the definition of “pensionable age” insert—

“Scottish basic rate limit” means a rate limit set by the Scottish Parliament under section 80(2A) of the Scotland Act 1998 for the purposes of determining the extent to which a Scottish taxpayer’s income is charged at the Scottish basic rate where a Scottish rate resolution under that Act has set more than one rate for the tax year”.

7. In section 280(2) (abbreviations and general index), after the entry relating to “scheme sanction charge” omit the entries of “Scottish additional rate”, “Scottish higher rate”, and “Scottish basic rate”.

Amendments to the Income Tax (Trading and Other Income) Act 2005

- 8.—(1) The Income Tax (Trading and Other Income) Act 2005⁽⁹⁾ is amended as follows.

(2) In section 669(3)⁽¹⁰⁾ (reduction in residuary income: inheritance tax on accrued income), in paragraph (a), for “additional rate, the Scottish additional rate, the higher rate or the Scottish higher rate”, substitute “applicable rate”.

- (3) After section 669(3) insert—

“(3A) For the purposes of subsection (3), the “applicable rate” means—

- (a) the additional rate,

⁽⁸⁾ Section 279 was amended by paragraph 21 of Schedule 17 to the Finance Act 2011. There are other amendments but none are relevant.

⁽⁹⁾ 2005 c. 5.

⁽¹⁰⁾ Section 669(3) was amended by section 4(13) of the Finance Act 2016 (c. 24). There are other amendments but none are relevant.

- (b) the higher rate, or
- (c) in the case of a Scottish taxpayer, any Scottish rate above the Scottish basic rate.”.

(4) In section 685A(3)⁽¹¹⁾ (settlor-interested settlements) for “the Scottish additional rate” substitute, “the highest Scottish rate”.

Amendments to the Finance (No.2) Act 2005

9.—(1) Section 7 of the Finance (No.2) Act 2005⁽¹²⁾, (charge to income tax on social security pension lump sum), is amended as follows.

(2) In subsection (5)—

- (a) after the words “a charge under this section” insert “for a person who is not a Scottish tax payer in the applicable year of assessment”;
- (b) in paragraph (c) omit “or, if P is a Scottish taxpayer, the Scottish basic rate”,
- (c) in paragraph (d) omit “or, if P is a Scottish taxpayer, the Scottish higher rate”, and
- (d) in paragraph (e) omit “or if P, is a Scottish taxpayer the Scottish additional rate”.

(3) After subsection (5) insert—

“(5A) Where P is a Scottish taxpayer in the applicable year of assessment, a charge under this section is a charge in respect of the amount of the lump sum at the following rate—

- (a) if P’s Step 3 income for the applicable year of assessment is nil, 0%;
- (b) if P’s Step 3 income for that year of assessment is greater than nil but does not exceed the Scottish basic rate limit for that year, the Scottish basic rate for that year;
- (c) if P’s Step 3 income for that year of assessment exceeds the Scottish basic rate limit for that year, any higher Scottish rate for that tax year that is applicable to P.”.

Amendments to the Income Tax Act 2007

10.—(1) Section 414(2)⁽¹³⁾ (relief for gifts for charity) is amended as follows.

(2) In paragraph (b) after “(see section 10)” insert “and additionally, in the case of a Scottish taxpayer, the Scottish basic rate limit and any other Scottish rate limit,”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

⁽¹¹⁾ Section 685A was inserted by paragraph 6 of Schedule 13 to the Finance Act 2006 (c. 25) and amended by paragraph 22 of Schedule 22 to the Finance Act 2009, paragraph 569 of Schedule 1 to the Income Tax Act 2007, section 67(1) of the Finance Act 2008 (c. 9) and S.I. 2015/1810.

⁽¹²⁾ 2015 c. 22. Section 7 was amended by paragraphs 64 and 65 of Schedule 1 to the Finance Act 2008 (c. 9), paragraph 24 of Schedule 2 to the Finance Act 2009, paragraphs 134 and 135 of Schedule 46 to the Finance Act 2013 (c. 29), paragraph 604 of Schedule 1 to the Income Tax Act 2007 and by S.I. 2015/1810.

⁽¹³⁾ Section 414 was amended by paragraph 20 of Schedule 1 to the Finance Act 2008, paragraph 6 of Schedule 2 to the Finance Act 2009 (c. 10) and S.I. 2015/1810.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential changes to various provisions of income tax legislation following the introduction of the Scotland Act 2016 (c. 11) which devolved the power to set Scottish income tax rates and thresholds on non-savings employment income, to the Scottish Government for the tax year 2017-18 and subsequent tax years.

The Scottish Government must set a Scottish basic rate of income tax for each tax year and may in addition set other rates and thresholds for income tax which could vary in amount and name from those set by the UK Parliament. These Regulations make amendments in order to make the existing UK wide income tax legislation work in respect of Scottish taxpayers.

Regulations 2 to 7 deal with the taxation of pensions legislation contained in the Finance Act 2004 (c.12) (“FA 2004”). Regulation 3 amends section 192 of FA 2004 which deals with relief at source for contributions to registered pension schemes. Scottish taxpayers who pay income tax at a higher Scottish rate than the Scottish basic rate will (on the making of a claim) be entitled to have their Scottish basic rate limit and any other higher Scottish rate limits increased by the amount of the grossed up contribution.

Regulation 4 amends section 227 of FA 2004 which deals with the calculation of the annual allowance charge. A new subsection (4AA) is inserted which provides that Scottish rates of income tax should be used when making the calculation for a Scottish taxpayer.

Regulation 5 amends section 237B of FA 2004 which provides that a taxpayer may, in certain circumstances, issue a scheme administrator of a registered pension scheme with a notice requiring payment of an annual allowance charge relating to that scheme on behalf of that taxpayer. The section is amended so it refers to Scottish tax rates when calculating the maximum amount of the annual charge that can be specified in the notice by a Scottish taxpayer.

Regulations 6 and 7 make consequential changes to the definitions and abbreviations provisions contained in sections 279 and 280 of FA 2004.

Regulation 8 makes consequential changes to sections 669 and 685A of the Income Tax (Trading and Other Income Tax 2005 (c. 5). Section 669 which provides for a reduction in the residuary income of a deceased’s estate in certain circumstances, is amended to reflect the fact that the Scottish Parliament may now set Scottish rates of income tax that do not correspond to the rates that apply to the remainder of the UK. Section 685A which provides for a tax credit where a person other than the settlor receives an annual payment from a settlor-interested trust is amended so that the credit for a Scottish taxpayer is calculated at the highest Scottish rate rather than the Scottish additional rate which was applicable prior to 2017-18.

Regulation 9 amends section 7 of the Finance (No. 2) Act 2005 (c.22) which imposes a charge to income tax where a person becomes entitled to a social security lump sum. In the case of a Scottish taxpayer the charge is calculated by reference to the Scottish basic rate and any other higher Scottish rates that may be set.

Regulation 10 amends section 414 of the Income Tax 2007 (c. 3) which deals with relief for gifts to charity. In the case of a Scottish taxpayer who has made a qualifying donation, the Scottish rate limits will be increased by the grossed up amount of the gift in addition to the basic and additional rate limits applicable elsewhere in the UK.

An Impact Assessment covering this instrument was published on 28 May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and is available on the website at <http://www.parliament.uk/documents/impact-assessments/IA15-004.pdf>. It remains an accurate summary of the impacts that apply to this instrument.