

Financial Scrutiny Unit Briefing

Scotland Act 2012: Financial provisions

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This briefing summarises the financial and non-financial provisions included in the Scotland Act 2012. Specifically it outlines the new provisions in relation to the Scottish Rate of Income Tax, the devolution of taxation on land transactions and disposals to landfill and related revenue borrowing powers. The new capital borrowing powers are also outlined. Finally, the briefing looks at the cost of administering the new provisions as well as how the block grant will be adjusted to reflect these new revenue-raising powers.

**Scotland Act 2012**

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EXECUTIVE SUMMARY

The Scotland Act 2012 transfers a number of new financial and non-financial powers to the Scottish Parliament. The Scottish Rate of Income Tax supersedes the existing tax varying power, the Scottish Variable Rate. From April 2016, the UK rates of income tax will be reduced for Scottish taxpayers by 10p at the basic, higher and additional rates and the Scottish Parliament will have the flexibility to set a different rate of income tax each year for Scottish taxpayers by adding a new amount uniformly to all rates. Tax revenues from the Scottish Rate of Income Tax will accrue to the Scottish Government, but will still be collected by Her Majesty's Revenue and Customs (HMRC). From April 2015, Stamp Duty Land Tax and Landfill Tax will become fully devolved taxes with the design and collection under the responsibility of the Scottish Government. The Act also allows for additional taxes to be devolved in the future by Order.

There will be a deduction from the Scottish block grant as a result of these new revenue-raising powers being transferred to the Scottish Parliament. For the adjustment in relation to the Scottish Rate of Income Tax, the Scottish Government and the UK Government have agreed to develop a mechanism based on the proposals of the Holtham Commission in Wales. An agreed deduction mechanism for Stamp Duty Land Tax and Landfill Tax has yet to be finalised by the Scottish and UK Governments. The Scottish Government has indicated that it will seek the agreement of the Scottish Parliament on the adjustments to the block grant.

A Scottish cash reserve and a revenue borrowing facility will be in place so that the Scottish Government can manage differences between tax forecasts and actual receipts.

The Act also provides new capital borrowing powers from April 2015. The Scottish Government will be able to borrow up to 10% of the capital budget any year with a cumulative limit of £2.2 billion. Borrowing can be from the National Loans Fund, via the Secretary of State for Scotland, or from commercial banks. Scottish Ministers may in principle have access to loans over a much longer period than the standard ten years considered by the National Loans Fund.

In addition, there is a power in the Act which will enable the Government to amend, in future, the way in which Scottish Ministers can borrow to include bond issuance, without the need for further primary legislation. The UK Government is conducting a review of the costs and benefits of bond issuance over other forms of borrowing and will consider extending Scottish Ministers' powers where this does not undermine the overall UK fiscal position or have a negative impact on total UK borrowing.

The Joint Exchequer Committee provides an important forum for discussion and decision about issues related to the implementation and operation of the Act such as establishing the new financial relationship between the Governments. The [Finance Committee](#) (2013c) has recently published a report on the implementation of the financial powers in the Act. It concluded that effective parliamentary scrutiny of the implementation process is essential.

INTRODUCTION

The [Scotland Act 2012](#) (from here on referred to as “the Act”) includes the following financial powers:

- Devolved responsibility for setting a Scottish Rate of Income Tax (SRIT), which will replace 10 per cent of UK Income Tax in Scotland from April 2016
- Full devolution of taxation on land transactions and disposals to landfill from April 2015
- A mechanism for further devolution of taxes in the future
- New capital borrowing powers from April 2015
- Revenue borrowing powers and a Scottish cash reserve to manage differences between forecasts and actual tax receipts.

The proposed timescale for the financial provisions in the Act is set out overleaf. Land and Buildings Transaction Tax (LBTT) and Landfill Tax rates will be published in the draft budget 2015-16 and the Scottish rate of income tax will be published in the draft budget 2016-17. This briefing outlines the financial powers and explores related issues such as the cost of administering the financial provisions and the process for adjusting the block grant to reflect the new revenue-raising powers. The non-financial powers transmitted through the Act are also outlined in Annex 1.

TIMETABLE FOR FINANCIAL PROVISIONS IN SCOTLAND ACT (2012)

		Land and buildings transactions tax	Landfill tax	Revenue Scotland and tax powers	Borrowing powers	Scottish Rate of Income Tax
	Mar	OBR publishes first Scottish tax forecasts – to be updated bi-annually				
	Apr					
	May	Scotland Act (2012) receives Royal Assent				
2012	Jun	Statement on the Scottish Government's approach to taxation				HMRC's programme board meets for first time
	Jul	Consultation				
	Aug					
	Sep					
	Oct			Head of RS appointed		
	Nov	Bill introduction	Consultation			HMRC appoint Accounting Officer for SRIT
	Dec					
	Jan			Consultation		
	Feb					
	Mar					
2013	Apr		Bill introduction			
	May					
	Jun					
	Jul	Enactment				
	Aug					
	Sep					
	Oct	Autumn 2013- Summer 2014:				
	Nov					
	Dec			Bill introduction		
	Jan	Consultation, Parliamentary scrutiny and approval of regulations	Enactment			
2014	Feb					
	Mar					
	Apr					
	May					
	Jun					
	Jul					
	Aug			Autumn 2014: Enactment		
	Sep					
	Oct			RS established in statute at arm's length from Ministers by 2015		
	Nov					
2015	Dec					
	Jan					
	Feb					
	Mar					
	Apr	Introduction of new Scottish taxes, withdrawal of UK taxes, block grant reduction			Introduction of revenue and capital borrowing powers	
	May					
	Jun					
	Jul					
	Aug					
	Sep					
Oct						
Nov						
Dec						
Jan						
Feb						
Mar						
Apr					Introduction of SRIT	

TAX POWERS

SCOTTISH RATE OF INCOME TAX (SRIT)

SRIT is due to be introduced in April 2016 and will apply to all Scottish taxpayers (see definition in Box 1). Section 26 of the Act provides for the basic, higher and additional rates of the non-savings non-dividend (NSND) income of Scottish taxpayers to be reduced by 10 pence. The Scottish Parliament will then levy a SRIT which will apply equally to all of these rates. This power will supersede the existing tax varying power, the Scottish Variable Rate (SVR) set out in the Scotland Act 1998 which has never been used. Other than the power to set the Scottish rate, the rest of the income tax structure will remain a reserved matter decided on by the UK Government and income tax revenues will continue to be collected by HMRC.

Box 1 – The definition of a Scottish taxpayer

Section 25 of the Act sets out the definition of a Scottish taxpayer.

The two following conditions must be fulfilled for a person to be a Scottish taxpayer in relation to any year of assessment:

1. They must be treated as resident in the UK for income tax purposes in that year. There are a number of factors which the HMRC considers for determining residency in the UK, such as living 183 days or more in the UK in a tax year, moving permanently to the UK or spending time in the UK routinely.
2. Scotland must be the part of the UK with which they have the closest connection during that year. In order for this to be the case one or more of the following conditions must apply:
 - a. They spend at least a part of that year in Scotland; and for at least part of that time spent in Scotland, their principal UK home is located in Scotland and use of it is made as a place of residence; and the times in that year when Scotland is where their principal UK home is located comprise (in aggregate) at least as much of that year as the times (if any) in that year when the location of their principal UK home is not in Scotland
 - b. The number of days they spend in Scotland in that year is equal or above the number of days they spend elsewhere in the UK¹
 - c. For the whole or part of the tax year they are an MSP, an MP representing a constituency in Scotland, or an MEP representing Scotland. This is regardless of the location in the UK of their main place of residence.

SRIT will need to be set every year by the Scottish Parliament for only one tax year and for the whole of that year. The Act requires that a Scottish Rate Resolution be made before the start of the tax year – i.e., by 5 April at the latest – to provide the statutory basis for the collection of receipts from the start of the tax year. SRIT may not be set more than 12 months before the start of that year. [Annex B](#) of the Memorandum of Understanding (MoU) on SRIT ([Scottish Government](#) 2013a) states that the Scottish Government should provide information to HMRC about the proposed SRIT for the coming tax year by 30 November before the tax year. The Scottish Government has the right to change SRIT up to the last day before the start of the new tax year as is currently the case in the UK but changing it after November may incur additional costs for the Scottish Government ([Public Audit Committee](#) 2014a). The Act states that “only a member of the Scottish Government may move a motion for a Scottish Rate Resolution.”

¹ They spend a day in Scotland if but only if they are in Scotland at the end of that day.

The Office for Budget Responsibility (OBR) projections for SRIT receipts are presented in Figure 1 and show that the expected receipts have been revised downwards. This was raised at by the Finance Committee on 17 April 2013, when the chairman of the OBR Robert Chote noted:

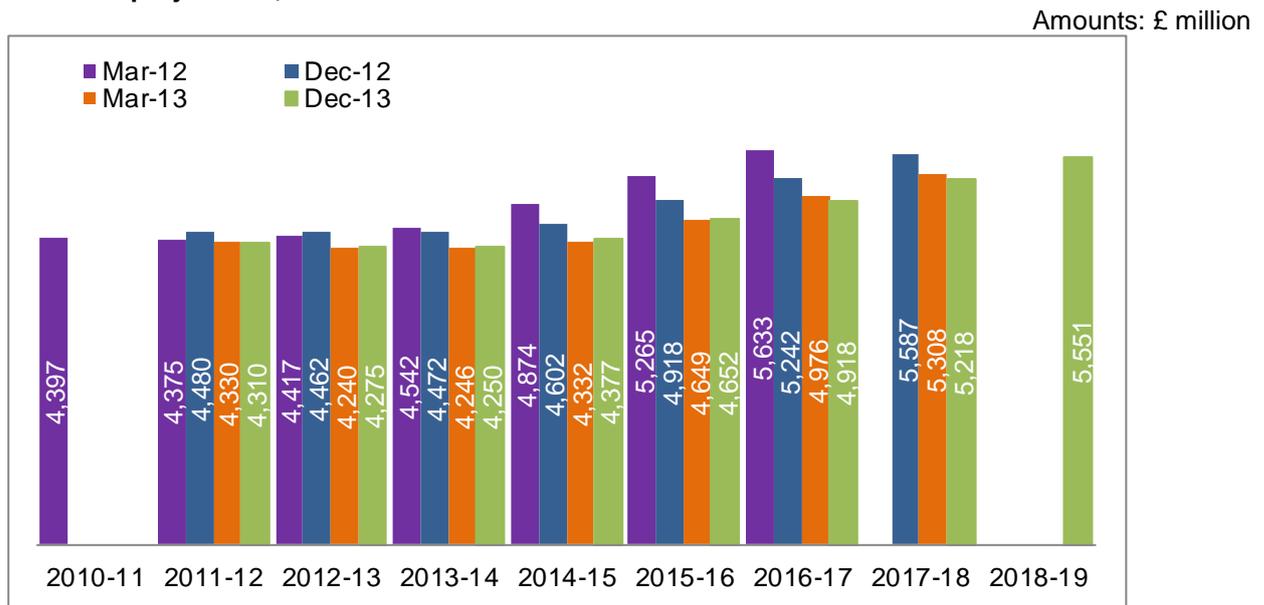
“With these numbers – indeed, this is true of most receipt flows – we have a combination of new information from the recent data that has been coming in and whatever judgements we make about how things will evolve further out. In terms of the changes in the data that we have received recently, we get some of the most important information on income tax in the early months of the year, partly because that is when self-assessment receipts are coming in. Non self-assessment PAYE receipts have come in relatively weak compared to our expectations, and some of that mechanically knocks through to the future years of the forecast as we apply growth rates to what we think will have come in in the previous year. The unexpected weakness of PAYE is consistent with the fact that there has been weaker average earnings growth than we had anticipated.” ([Finance Committee 2013a](#))

Specifically, he stated that the downward change in the forecast tax receipts for March 2013 compared with the December 2012 forecast is a reflection of the “deterioration in the UK forecast and the Budget 2013 policy announcement that personal allowances will reach £10,000 in 2014-15.” The OBR expects receipts to increase from 2014-15 onwards as the economy recovers ([Finance Committee 2013c](#)).

The OBR added that the introduction of the 50p additional rate of income tax in 2010 and its reduction to 45p in 2013 had led to behavioural responses that were difficult to predict and which increased the error margin of income tax forecasts. In relation to SRIT specifically, he noted that:

“...the crucial point is that [the difficulties in forecasting] will depend on how different from 10 per cent the rate is. Clearly, if the rate is 10 per cent, there are all the uncertainties about the outlook for income tax receipts anyway, but if it is significantly different from 10 per cent there will be the additional issue to do with trying to judge how people will respond to the differential.” ([Finance Committee 2013a](#))

Figure 1 OBR SRIT projections, 2010-11 to 2018-19



Source: OBR [2012a](#), [2012b](#), [2013a](#), [2013c](#)

Income tax including SRIT will be collected by HMRC and in-year payments of SRIT revenues to the Scottish Government will be based on OBR SRIT forecasts. A forecast will be used as the actual amounts generated by SRIT will only be known around 12 months after the end of each financial year (due to the timing of self assessment returns). There will then be a reconciliation process to determine the difference between the forecast and actual returns, with adjustments for over- and under-payment made in a subsequent year. This reconciliation process will also impact the block grant adjustment (discussed further below).

LAND AND BUILDINGS TRANSACTION TAX

Sections 28 and 29 of the Act provide for the devolution of taxes on transactions involving interests in land and for the disapplication of UK Stamp Duty Land Tax (SDLT) in Scotland in April 2015. The Land and Buildings Transaction Tax (Scotland) Bill (the LBTT Bill) was the first of three related Bills that resulted from measures enacted in the Act. It made provision for a tax on land transactions in Scotland and received Royal Assent on 31 July 2013. The Land and Buildings Transaction Tax (Scotland) Act provides for the replacement of SDLT by LBTT in April 2015 and introduces a number of important changes to the SDLT regime, such as the introduction of a “proportional progressive structure” similar to income tax rather than the existing “slab” system ([Finance Committee 2013c](#)).

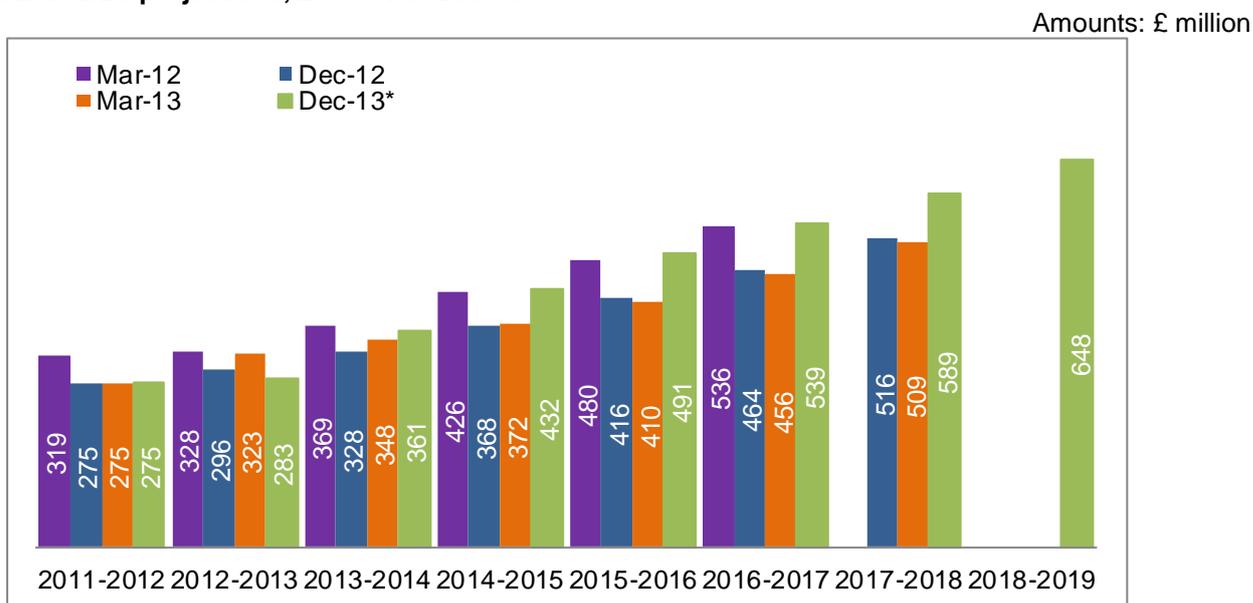
The design and collection of LBTT will be under the responsibility of the Scottish Government and all LBTT receipts will be paid into the Scottish Consolidated Fund. A portion of SDLT is already currently collected by Registers of Scotland (RoS) which manages the land registration process. The Scottish Government intends that RoS will have operational responsibility for the collection of LBTT.

OBR forecasts for SDLT are presented in Figure 2. It shows that there has been a strong downward revision of revenue forecasts between the March 2012 and the March 2013 forecast. The Finance Committee stated that these forecasts were overly optimistic despite being calculated towards the end of the financial year to which they refer when much of the outturn data should presumably be available. The OBR makes SDLT revenue forecasts based on Scotland’s share of UK SDLT receipts and assumes that the current system of SDLT will remain in Scotland after the introduction of LBTT. The OBR will continue to assume this until “firm

details” of LBTT are available ([OBR 2013a](#)). The Scottish Government is expected to propose LBTT rates and bands when bringing forward the draft budget for 2015-16 in autumn 2014.

The Finance Committee noted that the Scottish Government is now doing its own forecasting for LBTT receipts and requested that these forecasts and the methodology be published ([Finance Committee 2013c](#)). In addition, it recommended that Revenue Scotland report to the Parliament on a 6 monthly basis with details of the outturn figures for LBTT. The Cabinet Secretary for Finance, Employment and Sustainable Growth stated in response that he expected Revenue Scotland to report at least every 6 months.

Figure 2 OBR SDLT projections, 2010-11 to 2018-19



* Figures for 2011-12 and 2012-13 are outturn receipts ([Finance Committee 2013c](#)).

Source: OBR [2012a](#), [2012b](#), [2013a](#), [2013c](#)

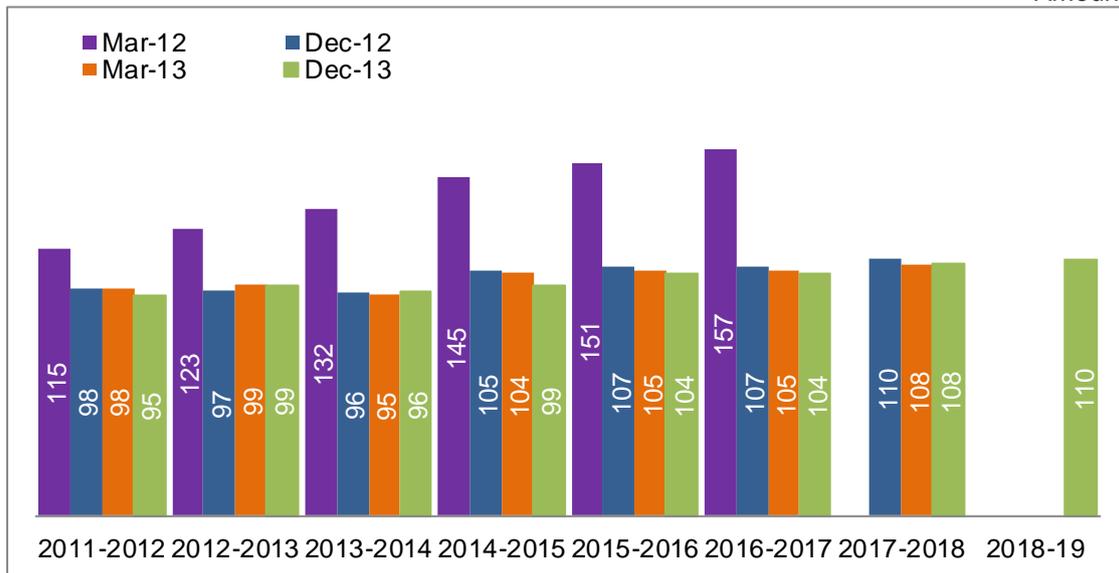
LANDFILL TAX

Sections 30 and 31 of the Act provide for the devolution of Landfill Tax from April 2015. The Landfill Tax (Scotland) Act was introduced to the Scottish Parliament on 17 April 2013 and received Royal Assent on 21 January 2014. It replaces the current UK Landfill Tax regime. The Act draws on the existing UK Landfill Tax regime and subordinate legislation will allow the Scottish Government to set rates and add or remove exempted material in future. The Scottish Government intends that Revenue Scotland will delegate operational responsibility for the collection of Scottish Landfill Tax to the Scottish Environment Protection Agency (SEPA).

The OBR forecast Scottish Landfill Tax receipts by assuming a constant share of UK landfill tax receipts based on an average of the last three years. The Landfill Tax forecasts and adjustments are shown in Figure 3. There is a significant difference between March 2012 and subsequent forecasts. According to the OBR, this is primarily due to a weaker UK forecast. However, the Financial Memorandum to the Bill ([Scottish Parliament 2013a](#)) states that the OBR does not take into account Scottish-specific policies on landfill waste such as the Scottish Government’s Zero Waste Plan which it estimates will decrease Landfill Tax receipts to £40.5m in 2025.

Figure 3 OBR Landfill Tax projections, 2010-11 to 2018-19

Amounts: £ million



Source: OBR [2012a](#), [2012b](#), [2013a](#), [2013c](#)

OTHER DEVOLVED TAXES

The Act also allows for additional taxes to be devolved in the future. This power can be used for new and existing taxes which meet the criteria set out in the [Command Paper](#) (HM Government 2010). For example, the UK Government is committed to devolving Aggregates Levy once the outstanding legal challenges have been fully resolved.

The Act also gives the Scottish Parliament the power to be able to introduce specified new taxes applicable only to Scotland, with the agreement of the UK Parliament.

TAX ADMINISTRATION ARRANGEMENTS

The Revenue Scotland and Tax Powers Bill relating to the administration and collection of LBTT, Landfill Tax and any other taxes which may be devolved or introduced in future was introduced in the Scottish Parliament on 12 December 2013. It is the third of three bills that result from measures enacted in the Act. It will deal with issues of administration, collection, tax avoidance and handling of taxpayer information. The Cabinet Secretary for Finance, Employment and Sustainable Growth John Swinney has stated that four governing principles should be at the heart of the Scottish Government's approach to taxation ([Scottish Government 2012](#)):

- Taxation should be proportionate to the taxpayer's ability to pay
- Taxpayers should be clear on the taxes they owe
- The system should be as simple as possible for the taxpayer to calculate
- The administration of taxation should be efficient

Role of Revenue Scotland

Revenue Scotland was set up in 2012 as an administrative unit within the Scottish Government in order "to ensure the efficient and effective care and management of the devolved taxes and that tax receipts are paid to the Scottish Consolidated Fund" ([Scottish Government 2012](#)).

The Revenue Scotland and Tax Powers Bill provides for the independent statutory establishment of Revenue Scotland by 2015 as the tax authority which will be responsible for collecting the devolved taxes and any other taxes which may be devolved or introduced in future. The intention is that Revenue Scotland will be set up as a Non-Ministerial Department

within the Scottish Administration. It would be independent of ministers and accountable to the Scottish Parliament. The specific duties of Revenue Scotland would be to:

- Administer the devolved taxes
- Provide information and guidance to taxpayers about the Scottish approach to tax
- Work with taxpayers to resolve disputes about tax and deal with fraud
- Provide information and advice about the administration of tax to the Scottish Government and the Scottish Parliament, including providing forecasts of tax receipts and information on achieving targets

Revenue Scotland will work with RoS on the administration of LBTT, and with SEPA on the administration of Landfill Tax. The division of powers and responsibilities between these organisations will be discussed further during the passage of the Revenue Scotland and Tax Powers Bill. Revenue Scotland has stated the need for a formal agreement between Revenue Scotland and SEPA. The Finance Committee has noted its concerns about the respective roles of Revenue Scotland and RoS, particularly in relation to compliance activity ([Finance Committee 2013f](#)) and about the lack of clarity regarding the respective roles of Revenue Scotland and SEPA regarding Landfill Tax ([Finance Committee 2013e](#)). It has called for these issues to be addressed as a matter of urgency.

Role of HMRC

HMRC is a non-ministerial department established by the Commissioners for Revenue and Customs Act 2005. It is the principal UK revenue-collecting department and its purpose is to make sure that money is available to fund the UK's public services, by collecting UK taxes.

When the Scottish Parliament make the first SRIT decision in 2015 HMRC will continue to be responsible for the collection of income tax in Scotland using the existing Pay-As-You-Earn (PAYE) and Self-Assessment (SA) tax collection systems.

HMRC will have a key role in producing the correct outturn information for Scottish income tax receipts and this will feed into the post-transition block grant adjustment. As such, the correct identification of Scottish taxpayers in the PAYE and SA systems is key to the successful operation of SRIT and the appropriate adjustment of the block grant.

The respective roles and responsibilities of HMRC and the Scottish Government regarding the operation of SRIT are set out in the MoU on SRIT ([Scottish Government 2013a](#)). It aims to ensure that the implementation and operation of SRIT is transparent, efficient and represents value for money, with clear lines of accountability. A key element of the arrangements has been the appointment by HMRC of an Additional Accounting Officer – Edward Troup, Second Permanent Secretary, HMRC - to account for the administration of SRIT to the Scottish Parliament, both in the set-up phase and in operation. In addition, an inter-Governmental Assurance Board was established and has representatives from the Scottish Government, HM Treasury, Scotland Office and HMRC. Its function is to ensure the successful implementation of the financial provisions of the Act. The Joint Exchequer Committee will provide Ministerial oversight of the programme of work.

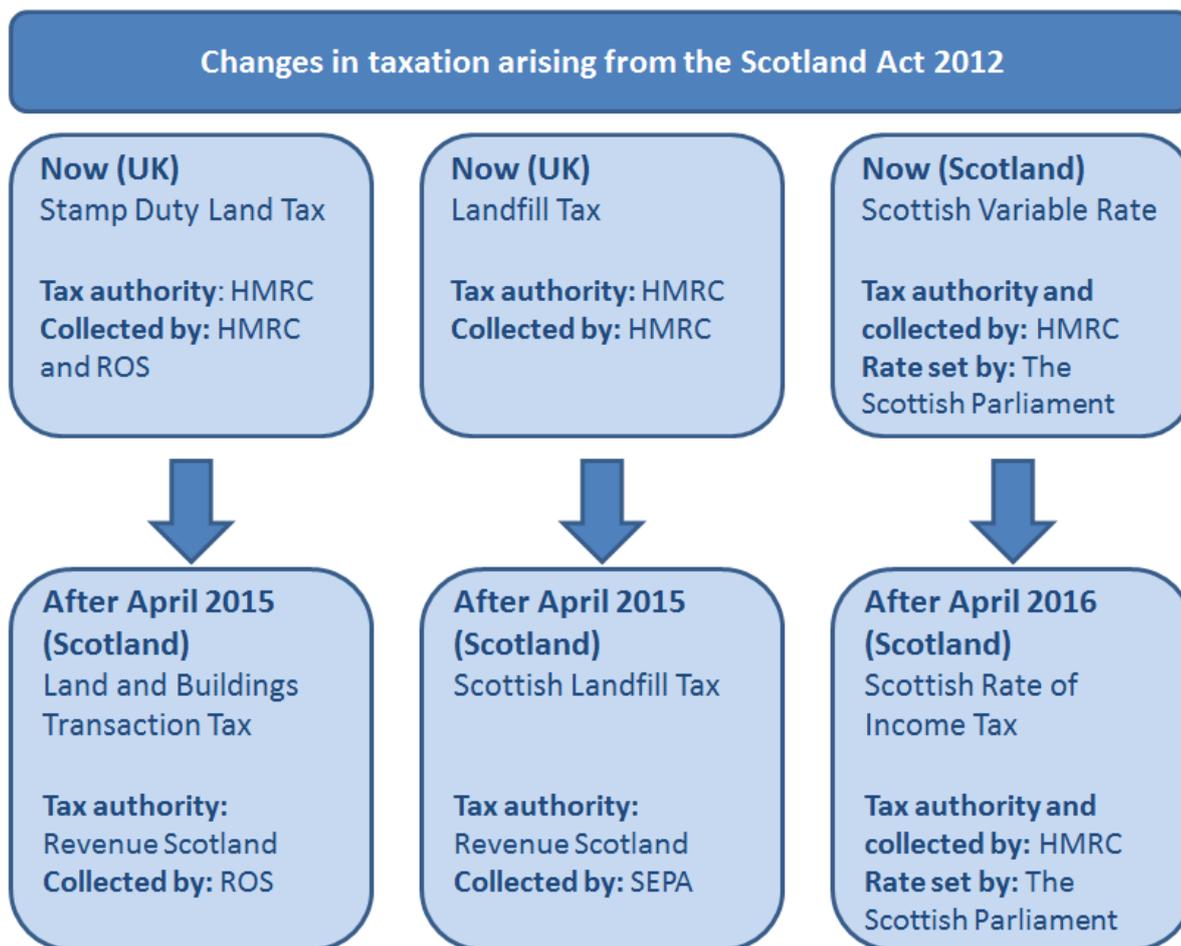
As listed in the MoU, HMRC will be charged specifically with:

- Developing IT and non-IT systems for the administration of SRIT
- Administering SRIT
- Invoicing the Scottish Government for agreed items of expenditure relating to SRIT
- Paying SRIT receipts into the UK Consolidated Fund

- Identifying Scottish taxpayers from information on its systems and by interaction with the taxpayers themselves²
- Maintaining a record of Scottish taxpayers
- Conducting risk analysis and assessment, and compliance and anti-avoidance activity on Scottish taxpayers in accordance with its normal policies concerning income tax
- Providing the Scottish Government with necessary information to enable Scottish Ministers and officials to discharge their duties in respect of parliamentary accountability, scrutiny, rate setting and forecasting in relation to SRIT

A summary of the current and future tax administration and collection arrangements is provided in Figure 4.

Figure 4 – A summary of current and future tax administration and collection arrangements



Role of the Office for Budget Responsibility

The OBR was tasked by [HM Government](#) (2010) to forecast SRIT, SDLT, Landfill Tax and Aggregates Levy liabilities from April 2012. The first Scottish forecast was published in March 2012. The OBR updates these forecasts twice a year alongside each Economic and Fiscal Outlook (at the Budget and in the autumn). The forecasts have a five-year horizon.

The OBR produced a methodology note in March 2012 setting out how it was going to forecast Scottish tax receipts. It is not possible to directly replicate the methodology that the OBR use to produce the UK forecasts for Scottish forecasts because of a lack of available macroeconomic data on Scotland. For this reason, the OBR currently bases its Scottish forecasts on Scotland's

² This will be recorded on HMRC systems by a Scottish taxpayer identifier for each individual.

historic share of the relevant UK tax stream and assumes that this share remains at the recent average level ([OBR 2013c](#)). The OBR stated:

“We consider these methodologies work-in-progress. The OBR’s role in forecasting is starting three years ahead of the initial devolution of the taxes, which will allow us to develop and improve forecasts in the light of experience and the availability of new information sources.” ([OBR 2012a](#))

The OBR SRIT forecasts will be important in several phases:

- **During the transitional phase:** the OBR forecast will determine the amount paid by the UK Government to the Scottish Government in relation to SRIT. The annual associated block grant deduction will also be based on OBR forecasts. There will be no reconciliation between forecasts and actuals during this transitional phase. Therefore if SRIT is set at 10p, Scotland’s budget will be the same as under existing arrangements.
- **After the transitional phase:** when SRIT is fully operational OBR forecasts will still be used to calculate UK Government payments to the Scottish budget corresponding to Scottish income tax receipts. OBR forecasts for the UK NSND tax base will also be used to determine the block grant adjustment. Actual SRIT receipts and the size of the UK NSND tax base will be reconciled with the OBR forecasts, with a corresponding transfer either to or from the Scottish budget to the UK Government in a subsequent year.

With regard to top-down forecasting methodology for SRIT receipts, the chairman of the OBR Robert Chote stated:

“...at the moment we are basing estimates on the survey of personal incomes – the SPI – which is basically a sample of tax returns across the UK, the Scottish share of which can be identified. That will become better, and I hope that the forecasts will therefore be less volatile and erratic when we get to the point at which HM Revenue and Customs flags particular taxpayers as Scottish taxpayers or not.” (Finance Committee 2013a)

With regard to SDLT and Landfill Tax, the OBR forecasts (alongside actuals) will be used as a basis for calculating the one-off block grant reduction at the point at which these taxes are fully devolved to Scotland (discussed further below). Thereafter, the Scottish Government will directly receive receipts associated with the new Scottish taxes.

BORROWING POWERS

REVENUE BORROWING POWERS AND THE CASH RESERVE

From April 2015 (when SDLT and Landfill Tax are devolved), the Scottish Government will be able to borrow up to £200 million in any one year with a cumulative limit of £500 million to deal with deviations between forecast and actual revenues. Borrowing will be from the NLF and Scottish Ministers will be required to repay loans within a maximum of four years. HM Treasury will have the power to revise the borrowing limits upward or downward through secondary legislation but not below the initial £500 million limit.

In addition, the Command Paper makes provisions for a new Scottish cash reserve to be introduced alongside the powers laid out in the Act in order to manage fluctuations around devolved tax receipts. Specifically:

...“when outturn receipts from taxes are lower than forecast by more than 0.5% of the Scottish resource budget, any accrued cash reserve and subsequently, borrowing, would then be drawn upon” ([HM Government](#) 2010)

The Scottish cash reserve will be held by the UK Government. Any outstanding borrowing will have first call on surplus outturn receipts in future years.

Scottish Ministers can also make discretionary payments into the Scottish cash reserve, up to an overall total of £125m, in advance of the implementation of the new tax powers.

REVENUE BORROWING LIMITS

The new revenue borrowing powers described above aim to help smooth fluctuations in tax receipts. The [Finance Committee](#) (2013c) has questioned whether the borrowing limit is sufficient given the divergence in forecasts in the different OBR reports. The Scotland Bill Committee recommended that the £500 million borrowing limit be at least doubled ([Finance Committee](#) 2013c).

In 2011 Professor David Bell produced a paper for the Scotland Bill Committee ([Bell](#) 2011) on forecasting income tax receipts and the adequacy of the Scottish Government's borrowing powers. Although errors in short-term forecasting tend to be small, he warned that longer forecasts horizons upon which the Scottish Government will have to rely carry greater uncertainty e.g. for the period 2004-05 to 2009-10, the average error in UK forecasts made from two years before the start of the financial year increased to £8.4bn and from three years before the start to £10.9bn. Bell concluded that:

“...the possibility of larger worst-case forecast error due to longer forecast horizons, poor OBR forecasts and the uncertainty of the inflation adjustment to the borrowing limit suggest that the proposed borrowing limits are too low to adequately protect the Scottish Government against the risk of revenue shortfalls. And this does not allow for the cumulative effect of successive years of over-optimistic forecasts [which] could drive the borrowing total above the £500m limit set in the Scotland Bill” ([Bell](#) 2011)

The Holtham mechanism aims to address these issues. In particular, the forecast that will be used will be the latest figure available before the start of each financial year rather than multi-year forecasts at each spending review.

The Finance Committee is concerned that the Scottish Government may have to borrow money as a consequence of forecasting errors rather than as a consequence of poor economic performance ([Finance Committee](#) 2013c).

CAPITAL BORROWING POWERS

Section 32 of the Act provides new capital borrowing powers to the Scottish Government from April 2015. The Scottish Government will be able to borrow up to 10% of Capital Departmental Expenditure Limit (DEL) in any one year with a cumulative 10-year limit of £2.2 billion. The UK Government has the power to raise and reduce this limit by Order but not to a level that is lower than the initial £2.2 billion limit ([HM Treasury](#) 2013). It should be noted that the UK Government brought forward from 2013 to 2011 £100m of pre-payments, a form of 'cash advance', to allow work on the Forth Replacement Crossing to begin. The UK Government set out that capital borrowing powers in 2015-16 will be £296m ([Finance Committee](#) 2013b). The Scottish Government has indicated in its Draft Budget 2014-15 that its indicative spending plans for 2015-16 assume the full £296m of borrowing to support capital investment ([Finance Committee](#) 2013c). It has stated that it will borrow the money from the NLF under the assumption that

repayment will be over 25 years at an interest rate of 5%. The Finance Committee has asked clarification on this assumption ([Finance Committee 2013c](#)). In response the Cabinet Secretary for Finance, Employment and Sustainable growth wrote:

“We will use capital borrowing powers to support investment in assets with long lifespans. By matching loan terms to the lifespan of assets, the Scottish Government will improve affordability by spreading the cost of repaying loans. The current NLF rate for borrowing over 25 years is 3.44%. However we chose to use a higher rate of 5% as a prudent estimate underpinning the projections in the draft Budget.”

There is a power within the Act to raise the statutory borrowing limits and thus the annual borrowing limits can be increased administratively. Governments can review the limits at the time of a Spending Review through the Joint Exchequer Committee.

In addition, the Scotland Act will enable the Scottish Government to amend, in future, the way in which Scottish Ministers can borrow to include bond issuance, without the need for further primary legislation. The UK Government stated that it would conduct a review of the costs and benefits of bond issuance over other forms of borrowing, and would consider extending Scottish Ministers' powers where this does not undermine the overall UK fiscal position or have a negative impact on total UK borrowing. HM Treasury launched a Consultation on bond issuance by the Scottish Government ([HM Treasury 2013a](#)) in June 2012, which closed in September 2012. It published a summary of responses in May 2013 ([HM Treasury 2013b](#)).

Although the value of issuing Scottish bonds is namely contingent on whether or not the UK Government decides to guarantee Scottish bonds, some arguments for giving the Scottish Government the power to issue gilts are as follows ([HM Treasury 2013b](#)):

- To encourage the Scottish Government to be more fiscally responsible by being accountable to private investors through the markets e.g. concerning long-term financial planning since bonds usually entail multi-year borrowing
- To minimise the cost of borrowing to the Scottish Government and hence the Scottish taxpayer through additional sources of borrowing. In practice, while it may be the case that Scottish gilts offer cheaper funding than commercial loans, it is unlikely that they would carry lower interest rates than loans from the UK Government through the NLF
- To provide greater flexibility in relation to the timing and allocation of the Scottish Government's resources
- As respondents to HM Treasury's consultation noted, to offer a political advantage as a “symbol of Scotland's increased autonomy and potentially a symbolic pre-cursor to independence”

Risks associated with the issuance of Scottish bonds include ([HM Treasury 2013b](#)):

- A liquidity risk given the lack of liquidity compared with comparable national bonds, particularly UK gilts
- A structural risk given the lack of precedence in Scottish bond issuance
- A credit risk in terms of the Scottish Government being able to service interest payments or repay the principal on bonds issued
- The risk of negative repercussions on the UK Government's own bond market if there is a loss of confidence in Scottish bonds or a default by the Scottish Government;
- A deadweight loss to taxpayers since borrowing through bond issuance (if rates were higher for Scotland than the UK) would lead to a higher overall UK public sector debt interest bill

- A cost to Scottish taxpayers if interest rates on Scottish bonds were higher than other forms of borrowing

COSTS OF ADMINISTERING THE FINANCIAL PROVISIONS

COST OF ADMINISTERING SRIT

As with the Scottish Variable Rate, HMRC will have initial start-up costs as well as annual running costs for implementing SRIT. These will fall to the Scottish Government. According to the UK Government implementation report (HM Government 2013), HMRC invoiced the Scottish Government for the costs associated with the implementation project in 2012-13 for a total of £165,141. Estimated costs for 2013-14 are £1.5m which includes work in relation to switching off SDLT and Landfill Tax and implementing SRIT. The Scottish Government has borne this cost and paid a further £196,870 to cover costs in respect of SRIT for the first quarter of the 2013-14 financial year ([Finance Committee](#) 2013c).

Because there are still a number of key decisions to be taken and practical details to be worked out, HMRC have only been able to provide a broad indication of the likely costs. The UK Government implementation report ([HM Government](#) 2013) stated that:

“...the cost for the project has been estimated at £40-45m for implementation, including around £10m in IT costs. After implementation, the annual running costs are estimated to be £4.2m each year.”

The Regulatory Impact Assessment of the Scotland Bill ([Scottish Parliament](#) 2011) emphasised that these costs are for what might be described as a "low visibility" system, whereby one income tax payment is identified on Scottish taxpayers' payslips and P60's which would allow a single UK PAYE system to be operated. Key factors which will influence the cost include the degree of transparency that the Scottish Government would like to give SRIT and whether it will apply to different reliefs (such as Gift aid and Pensions contributions) and types of income. These issues will determine the extent of the changes to HMRC's computer systems and processes. The design of the administration and collection system and consequential costs will also be influenced by a number of other factors, such as developments to the wider tax systems and future policy changes.

COST OF LBTT AND LANDFILL TAX

The [Financial memorandum](#) to the Landfill tax Bill ([Scottish Parliament](#) 2013a) noted that there is insufficient information to support an attribution of Revenue Scotland costs between LBTT and the Landfill Tax. It provides total estimated costs for Revenue Scotland and SEPA as shown in Table 1.

Table 1 Total estimated costs for Revenue Scotland and SEPA

	Revenue Scotland	SEPA
Set-up costs	£1.65m	£0.54m
Annual running costs	£2.21m	£0.3m

The Finance Committee noted on 30 January 2014 that HMRC has so far invoiced the Scottish Government for £13,600 for work concerning the analysis of how existing HMRC systems will

be affected by the disapplication of SDLT in Scotland in 2015 and the identification of stakeholders that will be affected by the change.

TOTAL COSTS

The Scottish Government's 2014-15 Draft Budget included the following allocation for the total costs of implementing the financial provisions in the Act:

Table 2 2014-15 Draft Budget allocation for implementing the financial provisions

2013-14	2014-15	2015-16
£3.5m	£10m	£40m

Source: [Scottish Government](#) 2013c

BLOCK GRANT ADJUSTMENT

GENERAL PROVISIONS

As a result of the financial provisions in the Act, the block grant will be reduced and replaced with the revenues that the devolved taxes and the Scottish rate of income tax are expected to raise.

A letter from the UK Government regarding changes to the Scotland Bill in March 2012 stated that the "two governments should reach agreement on implementation issues, including adjustments to the block grant, to take account of the Scottish Parliament's new fiscal powers. Each government should also provide assurance to its Parliament before relevant provisions of the Bill are brought into force and before implementation arrangements are brought into effect." In its reply the Scottish Government committed to seek "the Scottish Parliament's agreement to changes to Scotland's funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland's interests are being properly considered" ([Crawford](#) 2012). The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote on 7 January 2014 that:

"...the detail of these issues remains under discussion between officials, and that all aspects have not yet been defined and agreed."

ADJUSTMENT FOR THE SCOTTISH RATE OF INCOME TAX

The Command Paper ([HM Government](#) 2010) explained that alongside the implementation of SRIT there will be a block grant deduction each year to reflect the amount of income tax that would have been due to the UK Government before the main rates of income tax were reduced by 10p in Scotland.

During a two or three year transitional period the UK Government proposes to commence in April 2016 ([HM Government](#) 2010), a deduction in the Scottish block grant arising from the 10p reduction will be calculated annually based on the OBR forecast for Scottish income tax receipts. If the Scottish rate is set at 10p then the OBR forecast will be used for the block grant deduction. If any other rate is set then the deduction will be an estimate of how much would have been raised by a rate of 10p. How this figure is produced if SRIT is different from 10p has not yet been decided. There will be no reconciliation of SRIT revenues during this transitional period. After this period, the Command Paper states that the reconciliation will occur no later

than 12 months after the end of the financial year at which point typically 99.3% of income tax will have been collected ([HM Government](#) 2010).

The UK and Scottish Governments have agreed to use the indexed reduction method known as the “Holtham method” to calculate the annual block grant deduction for SRIT post-transition. Some of the details of this calculation are yet to be agreed upon by the UK and Scottish Governments. Under the Holtham method, the initial block grant adjustment (revenues generated by SRIT at 10p) will be indexed against movements in the UK’s non-savings, non-dividend (NSND) income tax base as this is the income on which SRIT will be levied. As with SRIT revenues, this block grant deduction will initially be based on forecasts for the UK NSND tax base. The reconciliation process will again compare this against actuals, with adjustments for over- and under-deduction made in a subsequent year (alongside the SRIT revenue adjustments referred to above). This dual reconciliation process (for both the SRIT revenues and the block grant adjustment) aims to link Scotland’s overall budget to the performance of the Scottish economy while shielding Scotland from UK-wide effects. As mentioned previously, the Scottish Government will be able to use the resource borrowing and cash reserve facilities to manage deviations between forecast and outturn receipts.

The Finance Committee has noted its concern over the lack of clarity in relation to the timing and data to be used by the OBR in carrying out its forecast for SRIT to inform Draft Budget 2016-17 and beyond, and invites the Scottish Government to explain how this will work in practice including the impact of the UK general election in May 2015 as the new UK Government may hold a fresh budget and could alter income tax rates and thresholds. This may have an impact on the income tax forecast for 2016-17. The Cabinet Secretary for Finance, Employment and Sustainable growth noted in his response to the Committee that:

“...during the transition period, the block grant adjustment will equal forecast receipts, unless a rate other than 10p is set (...). Consequently if during the transition period a forecast turns out to be incorrect because, for example, very recent developments were not factored in, the Scottish budget will not be better or worse off as a result. (...) Following the transition period, the same would apply until the reconciliation process was completed. At that point, the UK Government would make an adjustment to the Scottish budget.”

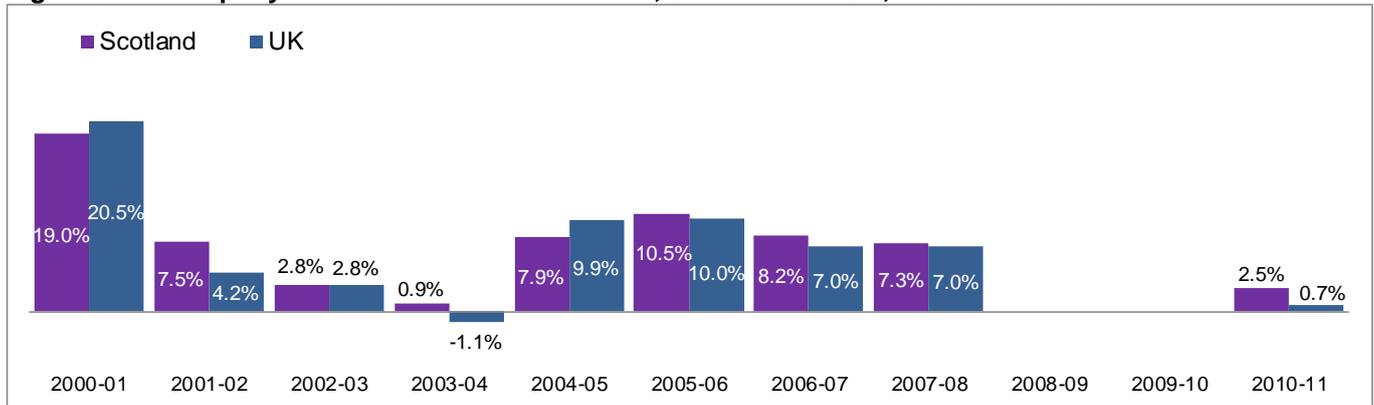
In response to the Finance Committee’s request for clarification over how the block grant adjustment will work if the Scottish Parliament decides to change the 10p rate either upwards or downwards, he stated:

“In the case, the OBR will adjust its estimate of actual SRIT receipts up or down by reference to the rate set, and the Scottish budget will receive that higher or lower amount as part of the block grant for the year. However the block grant adjustment would continue to be based on a 10p rate. This means that the Scottish budget would see a net increase if a rate higher than 10p was set, and a net reduction if a rate lower than 10p was set.”

While income tax receipts have recently tended to decrease faster and grow more slowly in Scotland than in the UK, this trend reversed in 2011-12. If the Scottish NSND income tax based grows faster than in the UK as a whole, the indexation method will benefit the Scottish budget compared to current arrangements. Conversely, Professor Holtham himself commented that the Holtham model “might not be in Scotland’s interests if [the Scottish] tax base grows more slowly than that of the UK” ([Finance Committee](#) 2013a).

Figure 5 provides the growth in NSND income tax base in Scotland and the UK. In all but two years (2000-01 and 2004-05), the Scottish NSND income tax base outgrew that of the UK.

Figure 5 Growth per year in NSND income tax base, Scotland and UK, 2000-01 to 2010-11³



Source: HM Treasury personal communication 2013

The method that will be used to adjust the block grant in relation to the SRIT is shown in more detail in Box 2, overleaf.

The annual cycle of activities as laid out in the MoU on SRIT ([Scottish Government 2013a](#)) is shown in Table 3.

Table 3 Annual cycle of Activities

Timing	Activity
By 30 November before tax year	Scottish Government (SG) provides information to HMRC about the proposed Scottish rate for the coming tax year
January before tax year	HMRC issues PAYE coding notices to Scottish taxpayers based on Scottish Taxpayer (ST) indicator
Before tax year	SG lodges Scottish rate motion before the Scottish Parliament in time for Scottish rate resolution to be passed by 5 April
During the tax year	Employers make PAYE returns and payments in respect of Scottish taxpayers HMRC updates systems with data from employers Scottish block grant is based on OBR forecast of Scottish income tax; SG draws down funding from block HMRC employer compliance HMRC updates ST indicator as appropriate
At the end of the tax year	HMRC issues Self Assessment (SA) returns
31 October after tax year	Taxpayer deadline for manual SA returns
31 January after tax year	Taxpayer deadline for online SA returns
February onwards after tax year	HMRC taxpayer compliance
Until 12 months after tax year	Reconciliation of SRIT element in Scottish block grant by reference to actual income tax liability declared

³ Data is unavailable for 2008-09 and 2009-10.

ADJUSTMENT FOR LBTT AND LANDFILL TAX

The Command paper ([HM Government](#) 2010) states that following the devolution of LBTT and Landfill Tax in April 2015:

“...there will be a one-off reduction which will then be deducted from the block grant for all future years. Actual outturn data for SDLT paid in respect of sales of property in Scotland is already available, enabling the calculation of the appropriate reduction in the block grant relating to the devolution of this tax to be readily identified. Data for [landfill tax] paid in Scotland, despite the tax base being in a fixed location, is not available although accurate estimates of past and future revenues, in contrast to income tax, may be derived with relative ease.”

Figure 2 indicates however that there are forecasting errors in SDLT receipts showing that the forward estimating of SDLT is difficult. Given this volatility the Cabinet Secretary stated that “the most reliable way of taking forward the issue is to look at a five-year average in the run-up to the implementation of the devolution of the tax responsibility.” ([Finance Committee](#) 2013g)

Chief Secretary to HM Treasury (CST) Danny Alexander stated to the Finance Committee:

“We have not concluded the discussions with the Scottish Government on how the block grant should be adjusted for the minor taxes, such as stamp duty land tax and Landfill Tax. We are aiming for something that meets that principle of equity and the commitment that we made in the Scotland bill command paper for a one-off adjustment that is simple to implement ... I have real problems with the idea of having a one-off adjustment purely in cash terms. Clearly, with inflation, the value of such a one-off adjustment would erode over time and would therefore cause a windfall gain to the Scottish Government and windfall loss to the UK taxpayers over quite a number of years” ([Finance Committee](#) 2013b)

The CST added that the methodology for calculating the SDLT adjustment should take into account past outturns but also “the prospects for the taxes” as a calculation based on an average of the past would not give a reflection of the prospects for revenues from SDLT that is fair to both Scotland and the UK given the recent extraordinary period. Comparing averages of SDLT receipts (£292 million for 2008-13), forecasts (£322 million for 2010-15) and both receipts and forecasts (£419 million for 2013-18), the [Finance Committee](#) (2013c) noted that:

“...it is unsurprising that the Scottish Government prefers an adjustment based on a five year average pre-devolution of SDLT while the UK Government favours an adjustment which includes a forecast of receipts post-devolution.”

Concerning landfill tax, Professor Holtham noted that it should be possible to carry out a one-off deduction without the need for indexation ([Finance Committee](#) 2013a). However the CST stated that he saw little divergence in forecast Landfill Tax revenues between Scotland and the rest of the UK and therefore HM Treasury would want an adjustment methodology that “reflected facts on both sides” ([Finance Committee](#) 2013b).

On 7 January 2014 the Cabinet Secretary for Finance, Employment and Sustainable Growth noted in his response to the Finance Committee’s report on the implementation of the financial powers in the Scotland Act 2012 that:

“The two key points here are the level at which to set the initial block grant adjustment, and whether there should be any further changes to the adjustment thereafter (...) They remain under discussion and no agreement has yet been reached.”

He also stated that he intended that responsibility for forecasting LBTT and Landfill tax receipts reside with the Scottish Parliament and that he expected that a Scottish fiscal commission would be set up in time to provide independent assurance on these forecasts for 2015-16 to be included in the draft Budget in autumn 2014.

Box 2 - Block grant adjustment in relation to the SRIT

1. From April 2016, Scotland's overall budget will be determined as follows:
 - Pre-adjusted block grant determined via Barnett
 - Minus the block grant adjustment based on the Holtham method
 - Plus the revenues generated by SRIT
2. In Year 1, the OBR will forecast SRIT revenues at the rate set by the Scottish Government.⁴ A forecast of SRIT revenues at 10p will constitute the Year 1 block grant.
3. The forecast of SRIT revenues at 10p will be deducted from the block grant and the forecast of SRIT revenues at the rate set by the Scottish Government will be added to this adjusted block grant to produce the Scottish block grant. Therefore if the Scottish Government sets a rate of 10p then overall resources will be unchanged. A rate of 11p would increase the Scottish Government's overall resource while a rate of 9p would lead to lower overall resource.
4. In Year 2 (Y2), the pre-adjusted block grant and the forecast of SRIT revenues will be calculated as in Year 1 (Y1). The block grant deduction in Y2 is calculated by indexing the Y1 deduction against the UK's NSND income tax base as follows:

$$Y2reduction = Y1reduction * \frac{Y2.UK.NSND.income.tax.base}{Y1.UK.NSND.income.tax.base}$$

5. As SRIT revenues are determined by the Scottish NSND income tax base, the overall Scottish budget will be determined by the extent that the NSND income tax base in Scotland grows faster/slower than the UK base as a whole.
6. However, it should be noted that the size of the Scottish and UK NSND income tax bases are initially forecasts. While these forecasts will be used to calculate the Scottish Government's budget, there will be a reconciliation process (around a year after the end of the financial year) whereby forecasts are replaced with actuals. This will determine whether an adjustment for over- or under-payments (by the UK Government to the Scottish Government) needs to be applied to the Scottish Government's budget for the following financial year.
7. The expectation is that forecast error for SRIT revenues (based on Scotland's NSND income tax base) will be similar to forecast error for the block grant adjustment (based on the UK's NSND income tax base). This should therefore minimise the extent to which post-reconciliation adjustments need to be made.

⁴ If the Scottish Government sets a Year 1 rate different from 10p then an estimate of how much would have been generated by a 10p rate will be needed to determine the block grant adjustment. How this will be done has not been decided yet given the potential behavioural effects resulting from the rate changes.

IMPLICATIONS OF FINANCIAL POWERS FOR BUDGET PROCESS

The financial provisions within the Scotland Act will have implications for the existing budget scrutiny process (see [Burnside](#) 2011 for more on the existing process). In particular, the Scottish Government's Draft Budget published each autumn will have assumptions on expected receipts from the various devolved taxes and borrowing requirements built into the spending plans. The Scottish Parliament will have a role in scrutinising these proposals as well as the operation and administration of the new tax powers.

Given the Act's changes to the revenue raising side of the budget, there have been changes made to the Written Agreement between the Scottish Parliament's Finance Committee and the Scottish Government ([Finance Committee](#) 2013d). The Written Agreement outlines the administrative arrangements for the scrutiny of the annual draft budget and the agreed budgetary information flows between Government and Parliament. The main changes to the Written Agreement stemming from the Scotland Act financial powers are as follows:

- The Scottish Government will, with effect from the Draft Budget for 2015-16 onwards, provide additional information in the annual Draft Budget document setting out forecasts of receipts from the devolved taxes - Scottish Landfill Tax and LBTT - and, for the purposes of the Draft Budget 2015-16 in particular, Scottish Government proposals for setting the rates and bands for these taxes.
- Future Draft Budgets will also include a commentary on outturn figures for the devolved taxes for the most recent available year, including any variance between outturn and forecasts;
- The Draft Budget will contain information about the Government's plans for utilising the borrowing powers introduced in the Scotland Act including the purpose and rationale of borrowing and an annual update on the costs of repayment and the Scottish cash reserve;
- The Draft Budget will set out how relevant block grant adjustments had been calculated by HM Treasury.

In terms of Parliamentary authority to influence the revenue raising side of the balance sheet, the Written Agreement states that the Scottish Parliament should be able to scrutinise and make recommendations on the Government's tax proposals as part of the annual draft budget scrutiny process and the plenary debate on the Finance Committee's Draft Budget report. The Written Agreement states ([Finance Committee](#) 2013d):

“The Finance Committee's report on the draft budget may include an alternative set of spending proposals, in which case the total spend being proposed may not exceed the total proposed by Scottish Ministers. The report will be debated by the Parliament on a motion from the Finance Committee prior to Christmas recess (...) Committees and individual Members may seek to propose amendments to the SG's expenditure proposals by tabling amendments to the Finance Committee motion. No amendment may seek to increase the total spend proposed. Therefore, amendments proposing any increase in one area must recommend how this increase will be financed. It should be noted that even if such amendments are agreed to, this does not automatically guarantee that expenditure proposals will be amended in the subsequent Budget Bill.”

It is proposed that thereafter the Parliament would be asked to approve rates and thresholds for the devolved taxes. However, the Parliament's power to approve or not to approve these proposals would not include the power to amend the rates and thresholds proposed by the Government. This is consistent with Rule 9.16.6 of the Parliament's Standing Orders which states that “amendments to a Budget Bill may be moved, and notice of amendments to such a

Bill may be given, only by a member of the Scottish Government or a junior Scottish Minister” ([Scottish Parliament](#) 2013b).

Concerning SRIT for example, the Cabinet Secretary for Finance, Employment and Sustainable Growth stated that:

“Were we to agree a process that was similar to that recently finalised for the devolved taxes, that would imply that the Scottish Government setting out proposals for the rate of SRIT, together with a forecast of receipts, in the draft Budget document each autumn, beginning in autumn 2015 for 2016-17. These proposals would be scrutinized by the [Finance] Committee, alongside the Government’s other taxation proposals and its spending plans. In subsequent years, the draft Budget document would include information about forecast outturn and actual receipts. The budget document for 2016-17 and onwards would also provide information about how the SRIT block grant adjustment had been calculated. We also envisage that the draft Budget would provide an independent assessment of tax receipts forecasts.”

AUDIT ARRANGEMENTS AND REPORTING ON IMPLEMENTATION

HMRC publishes annually a Resource Account which includes HMRC’s costs such as the cost of collecting income tax, and a Trust Statement which sets out the amount of tax collected. Costs associated with the collection of SRIT will be shown in the Resource Account and the amount of tax collected under the Scottish rate will be shown in the Trust Statement. Both will be subject to the annual audit by the National Audit Office (NAO) which issues a report on HMRC’s performance and will prepare a report to the Scottish Parliament on HMRC’s administration of SRIT. HMRC published its draft amendment to the UK Finance Bill 2014 on 10 December 2013 requiring the Comptroller and Auditor General of the National Audit Office to report annually to the Scottish Parliament on HMRC’s calculation and collection of SRIT. Audit Scotland has no statutory right of access to HMRC information. However, with regard to the role of Audit Scotland Amyas Morse, Comptroller and Auditor General at the NAO, said to the Public Audit Committee on 15 January 2014 ([Public Audit Committee](#) 2014a):

“I have a good working relationship with Audit Scotland and (...) I am prepared to co-operate closely with it to ensure that the committee gets the form of assurance that it finds most useful. I do not see any difficulty in considering any of the options for that. The committee is aware of the fact that I have statutory access, which is not easy to change, although I see no difficulty in our establishing our working arrangements. To date, we have co-operated very well on a range of issues.”

A MoU between Audit Scotland and the NAO is under discussion and will be finalised when the arrangements for putting SRIT in place are themselves finalised ([Public Audit Committee](#) 2014b).

Section 33 of the 2012 Scotland Act places a duty on each of the Secretary of State for Scotland and Scottish Ministers to make reports on the implementation and operation of the Finance Part (Part 3) of the Act.

The First Annual Reports on the Implementation and Operation of the Financial Provisions of the Scotland Act 2012 by the Scottish Government ([Scottish Government](#) 2013d) and the UK Government ([HM Government](#) 2013) were published in April 2013. Both reports will be laid before the Scottish and UK Parliaments annually until the first anniversary of when the last financial provision comes into force.

The Finance Committee has noted its concern about the level of information being provided by the Scottish Government and UK Government as negotiations progress over the implementation of the Scotland Act 2012 ([Finance Committee](#) 2013c).

JOINT WORKING AND DISPUTE RESOLUTION

The MoU on SRIT between the Scottish Government and HMRC ([Scottish Government](#) 2013a) includes a provision for dispute resolution:

“where a dispute arises over a payment in relation to the matters set out in this section, or about other aspects of the implementation of SRIT, it will be discussed at the Programme Board on which [the Scottish Government] is represented. If agreement is not reached between HMRC and SG at the programme board, the matter will be passed to the [Inter-government Assurance Board] IAB for resolution. If, exceptionally, the matter cannot be resolved there, it will be brought to the Joint Exchequer Committee for discussion and agreement by Ministers, whose joint decision will be final”.

The Joint Exchequer Committee met for the third time on 14 February 2013 and noted that substantial progress had been made by the two Governments to prepare for the successful delivery of the new financial provisions of the Scotland 2012 Act ([Scottish Government](#) 2013). Notwithstanding, the [Finance Committee](#) (2013c) noted its concern “about the level of information being provided by the two governments as the negotiations progress.”

ANNEX 1 – SCOTLAND ACT 2012: NON-FINANCIAL PROVISIONS

The Act comprises 45 sections and 4 Schedules. It makes several amendments to the Scotland Act 1998 and gives new powers to the Scottish Parliament and Scottish Government. This table gives a short overview of the new and amended non-financial provisions.

Section of Act	What the provision does	Date it came into force	Notes
1-3	Amends Scotland Act 1998 so that Scottish Ministers can make provision on the conduct of Scottish Parliament (SP) elections, the questioning of the elections and consequences of irregularities. Although they have to consult Secretary of State for Scotland (SoS) before exercising power Includes provisions so that elections for the Scottish Parliament could be combined with other elections	Not yet in force, requires an order to be made by SoS.	UK and Scottish Governments in discussion but no specific date agreed
4	The Scottish Parliament is no longer required to elect the Presiding Officer (PO) at the first meeting after a Scottish Parliament election and it is able to elect, as well as 2 Deputy POs, one or more short-term Deputy POs, in order to cover situations such as illness	3 July 2012 SI 2012/1710	The Scotland Act changes need to be reflected in the Parliament's standing orders. At the start of this Session, the Standards Procedures and Public Appointments (SPPA) Committee received representations suggesting that it should review the procedures for Presiding Officer elections. As this part of the standing orders has not been reviewed since 1999, the Committee decided to take a broad look at the rules to make sure they are still fit for purpose.
5	Scottish Parliament is required to appoint "at least" 4 members of the SPCB (Scottish Parliamentary Corporate Body) - membership was previously fixed at 4 members	3 July 2012 SI 2012/1710	SPPA Committee 1st report 2013 recommends changes to Standing Orders in order to take account of changes to the rules

Section of Act	What the provision does	Date it came into force	Notes
6	Anyone introducing a Bill is now required to make a statement that the Bill is within the legislative competence of the Scottish Parliament. Previously just a requirement placed on Scottish Ministers.	15 October 2012 SI 2012/1710	Scottish Parliament approved the proposed changes to amend the Standing Orders on 2 October 2012
7	Scottish Parliament is given greater flexibility in relation to the regime for Members' interests, including powers of sanction	3 July 2012 SI 2012/1710	In July 2013, the Standards, Procedures and Public Appointments Committee completed a consultation on a potential Committee Bill to amend the Interests of Members of the Scottish Parliament Act 2006. The Committee is currently developing the detail of the proposals to inform drafting instructions for the bill.
8	This section repeals sections 1(2) and (3) and Schedule 2 of the Scottish Parliament (Constituencies) Act 2004 as these transitional provisions are no longer required.	31 October 2012 SI 2012/2516	
9	This section amends section 30 of the 1998 Act to provide that where there is an alteration to the matters which are reserved matters or to Schedule 4 of that Act, the effect of which is that a provision of an Act of the Scottish Parliament ceases to be within legislative competence, the provision does not for that reason cease to have effect, unless an enactment provides otherwise.	3 July 2012 SI 2012/1710	
10	Devolves legislative competence to the Scottish Parliament in relation to the regulation of certain air weapons.	3 July 2012 SI 2012/1710	December 2012 Scottish Government consulted on Proposals for Licensing Air Weapons in Scotland Proposals for Licensing Air

Section of Act	What the provision does	Date it came into force	Notes
			Weapons in Scotland: An Analysis of Consultation Responses (July 2013) 2013 programme for legislation included plans for a Licensing Bill. It will improve licensing across a range of areas, including delivering the Government's commitment to introduce a licencing regime for air weapons.
11	Re-reserves regulation of activities in Antarctica.	Two months after Royal Assent (1 July 2012) 2012 c. 11	
12	Scottish Executive is officially renamed the Scottish Government.	3 July 2012 SI 2012/1710	Scottish Parliament approved the proposed changes to Standing Orders to reflect this amendment on 27 June 2012
13	Scottish Ministers have the power to make orders specifying which office holders are disqualified from being MSPs.	31 October 2012 SI 2012/2516	
14	Time limit for actions taken against Scottish Ministers for contravening the rights in the European Convention on Human Rights introduced.	3 July 2012 SI 2012/1710	
15	Power to vary retrospective decisions about non-legislative acts.	3 July 2012 SI 2012/1710	
16	The agreement of Scottish Ministers is required by UK Ministers before a recommendation to appoint – the BBC Trust Member for Scotland is made.	3 July 2012 SI 2012/1710	
17	Approval of Scottish Ministers, as well as that of UK Ministers, is required to be sought by Ofcom before appointing members of the Gaelic Media Service (Seirbheis nam Meadhanan Gàidhlig) whose operating name is MG Alba.	31 October 2012 SI 2012/2516	
18	Amends the Crown Estate Act 1961 to provide that there must be a Crown	1 August 2013 SI 2012/2516	

Section of Act	What the provision does	Date it came into force	Notes
	Estate Commissioner with special responsibility for Scotland, appointed by Her Majesty on the recommendation of the Chancellor of the Exchequer who must first consult the Scottish Ministers before making that recommendation.		
19	Allows Scottish Ministers to make certain regulations in relation to the issuing of licences to doctors who may prescribe controlled drugs to addicts	31 October 2012 SI 2012/2516	Guidance explaining the transfer of power and setting out the processes to be followed in making an application was issued to NHS Scotland as CEL 2012 35 on 18 October 2012. To date, no applications for a licence have been received by the Scottish Government.
20	Devolves executive competence in respect of prescribed alcohol limit which applies when driving in Scotland	3 July 2012 SI 2012/1710	September 2012 Scottish Government consulted on Reducing the Drink driving limit in Scotland Responses to the Consultation Consultation Analysis Summary (March 2013)
21	Devolves executive competence to determine certain Scottish national speed limits and make regulations on the necessary traffic signs.	3 July 2012 SI 2012/1710	
22	Speed limits: supplementary	3 July 2012 SI 2012/1710	
34	Convention rights and EU law: role of Advocate General in relation to criminal proceedings	22 April 2013 SI 2013/6	Scottish Government and Office of the Advocate General ran a consultation between 22 October and 19 November 2012 on whether or not the draft Transitional Order and the

Section of Act	What the provision does	Date it came into force	Notes
			Commencement Order would fully achieve implementation of the new provisions in the desired way.
35	References of compatibility issues to the High Court or Supreme Court. Compatibility issues can be referred from the High Court to the Supreme Court in certain circumstances, but the Supreme Court will only determine the compatibility issue and will then refer the case back to the court in Scotland to apply the decision and determine the outcome of the case.	22 April 2013 SI 2013/6	
36	Convention rights and EU law: criminal appeals to the Supreme Court	22 April 2013 SI 2013/6	
37	Amends the Scotland Act 1998 to impose time limits for seeking permission to appeal to the Supreme Court against a determination of a devolution issue in criminal proceedings	22 April 2013 SI 2013/6	
38	Requires the SoS to review the provision in sections 34 to 37 after the provisions have been in force for 3 years (or earlier if the Secretary of State considers it appropriate).	22 April 2013 SI 2013/6	
39	Scotland Act 1998 is amended so that the maximum penalties that may be applied to criminal offences in subordinate legislation is updated	31 October 2012 SI 2012/2516	
Schedule 1	Amendments of Schedule 1 to the 1998 Act	31 October 2012 SI 2012/2516	

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