

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

Purpose

1. This document sets out a Memorandum of Understanding (MoU) for engagement between The Scottish Fiscal Commission (SFC, or “the Commission”) and HM Revenue and Customs (HMRC).
2. The previous version of this Memorandum of Understanding agreed in November 2017 can be accessed [here](#).

Context

3. The main responsibilities of the Commission are set out in legislation, namely the Scottish Fiscal Commission Act 2016 (SFCA) ¹ and associated regulations.
4. It is the duty of the Commission to prepare forecasts at least twice a year to inform the Scottish budget, accompanying the Scottish Government’s Budget and Medium-Term Financial Strategy. These forecasts must cover five years and include Scottish onshore GDP, non-savings non-dividend income tax receipts, assigned VAT receipts, revenue from fully devolved taxes and devolved social security expenditure. The Commission must also assess the reasonableness of Ministers’ projections of their borrowing requirements. In addition the Commission must prepare a report on the accuracy of its forecasts each year, as well as an Annual Statement of Data Needs. From time to time, the Commission may be required to publish policy costings to accompany the introduction of secondary legislation outwith the Budget.
5. The Commission is a non-Ministerial Office in the Scottish Administration, consisting of Commissioners and staff, employed to produce independent forecasts which involves developing and running the forecasting models and producing the forecasts required to fulfil the Commission’s statutory duties.
6. HMRC administers taxes across the whole of the UK and also has a role in modelling and forecasting UK and Scottish tax revenues.
7. Given the roles of each organisation, there are a number of areas where engagement, collaboration and sharing of information will be beneficial to both organisations. This MoU sets out guidelines for engagement between the two organisations in areas including:
 - Sharing data and information
 - Developing data sources for modelling taxes in Scotland
 - Developing models and analysis of taxes in Scotland
8. The Commission is independent from the Scottish Government. However, the Commission works closely with the Scottish Government in delivering its functions - a formal protocol exists between the Commission and the Scottish Government. In general, where beneficial to their related functions, information and analysis shared between HMRC and the Commission may also be shared with the Scottish Government and vice versa (for information shared between HMRC and the Scottish Government). However, this will need to be covered on a case by case basis where there are any sensitivities.
9. This MoU is not a contract and nor is it legally binding. It does not in itself create lawful means for the provision of information: it simply documents the processes and procedures agreed between the organisations. The agreement should not be interpreted as removing or reducing existing legal obligations or responsibilities on each party, for example as data controllers under the Data Protection Act.

¹ Scottish Fiscal Commission Act 2016 <http://www.legislation.gov.uk/asp/2016/17/contents>

10. Information will be shared between the Office for Budget Responsibility (OBR) and the Commission around Budget events based in part on analysis produced by HMRC. This is covered by the separately agreed MoU between the Commission and the OBR and not covered here. The MoU between the Commission and the OBR can be accessed [here](#). HMRC and the Commission will not share sensitive budget information directly in relation to UKG or SG Budgets.

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

12. These circumstances are detailed in section 18 CRCA, which provides for the disclosure of information by HMRC for the purpose of a function of HMRC (section (2) (a)). The legal basis for the provision of information from HMRC to SFC will be for the purposes of HMRC's functions. This will be assessed on a case by case basis and is subject to HMRC's duty not to disclose confidential taxpayer and benefit claimant information. There will be instances where if HMRC discloses information to support the Scottish Fiscal Commission in fulfilling its responsibilities in respect of devolved tax powers (see paragraph 3 above), this will assist in HMRC's own taxes management function. In those instances, this MoU proceeds on the basis that it is legal for HMRC to disclose information to support The Scottish Fiscal Commission fulfil its responsibilities in respect of devolved tax powers (see paragraph 2 above), since this will assist in HMRC's own taxes management function.

Principles

13. The MoU for engagement between the Commission and HMRC is based on the following principles:

- HMRC recognises that the Commission is an independent, apolitical and impartial analytical organisation and understands its functions.
- To that end, any data or information shared by HMRC with the Commission, and any broader collaboration and engagement with the Commission, will only be used by the Commission in delivering its functions as outlined in paragraphs 3 to 5 and set out in the Scottish Fiscal Commission Act 2016. It is not within the Commission's functions to comment on HMRC activities, publications or analysis or UK Government policy more generally. The Commission reserves the right to comment on HMRC publications and analysis in so far as they relate to the delivery of its functions.
- HMRC will share relevant data with the Commission in a timely manner and with appropriate quality assurance.
- HMRC will seek the views of the Commission and engage with developing data related to the Commission's function.
- HMRC and the Commission will allow and encourage their analysts to collaborate in a positive manner for areas of shared interest.
- The data shared will either be in the public domain, anonymised or statistical.
- In general, information, data sharing and model development, between HMRC and the Commission, should also be open to the Scottish Government. This also applies for sharing the above items between HMRC and the Scottish Government, where it relates to the Commission's function.

In practice

Named contacts

14. The Commission and HMRC will each designate a single point of contact (SPOC) who will be responsible for ensuring efficient and effective communication between the Commission and HMRC. The SPOCs should be copied on any requests for data between the Commission and HMRC or on the supply of any deliverables. Interim detailed or technical exchanges may not necessarily need to include the SPOC; a judgement can be made on a case by case basis.

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

Sharing data and information

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

Survey of Personal Incomes data

17. HMRC make publically available the Survey of Personal Incomes (SPI) Public Use Tape (PUT). However, the Commission require these data to a tighter timescale than the general public.

18. When a new SPI dataset is developed internally by HMRC, HMRC and the Commission will discuss and agree the timing for delivery of the PUT. It is anticipated that the agreement for the precise delivery date will be made by the end of January in the year in which HMRC creates the SPI (so for SPI 2016-17 created by HMRC in early January 2019, the delivery date for the PUT will be agreed by the end of January 2019). HMRC and the Commission recognise the importance of providing the data in adequate time for the Commission's Summer forecast, and the need to take into account HMRC's ability to resource an earlier than normal delivery (the expectation for normal delivery is by mid to late April).

19. HMRC recognise that in some years the agreed timing of the PUT may need to be unexpectedly altered as a result of an earlier than expected Commission Summer forecast. In such a situation, HMRC and the Commission will discuss suitable alternative arrangements at the earliest opportunity.

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

RTI income tax data

21. HMRC will continue to share monthly in year monitoring liabilities data for Scottish income tax from the Real Time Information (RTI) data.

Incorporations modelling

22. HMRC will continue to share outputs from their Scottish specific incorporations model within one week of the UK fiscal events. The inputs of the model should continue to be adapted to suit the forecasting needs of the Commission.

VAT Assignment

23. HMRC will provide relevant estimates from the VAT Assignment Model on an agreed and regular timetable. Estimates will include the UK and Scottish VTTL as well as detailed sectorial breakdowns in order to support the Commission's VAT Assignment forecast.

24. Timing of delivery will take into account SFC and HMRC priorities, resource and timing of publication of relevant data which feeds into the VAT assignment estimates. HMRC and the Commission will discuss and agree the precise data requirements and timescales for delivery ahead of fiscal events. This agreement will be reached by the end of August each year with provisional estimates shared by end of September.

VAT SRS forecast

25. HMRC will share the headline growth rates from their standard rated share model commissioned by the OBR with the SFC on a confidential basis. This will occur within 5 days of the UK fiscal events to allow the forecasts to be used in the SFC's forecasts for Scotland.

Historic data for fully devolved taxes

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

Data development

Survey of Personal Incomes

27. The Commission has an interest in how the SPI is developed in future years particularly in relation to records for Scottish taxpayers. HMRC statisticians working on the SPI will engage with analysts from the Commission each summer following the PUT being shared. This will allow consideration of any changes to the SPI the Commission may wish to request.

Publications

28. The Commission will provide HMRC with as much notice as possible of their intention to include HMRC data in any publication.

29. HMRC will be invited to comment on the factual accuracy of the Commission's relevant publications in so far it relates to the use and presentation of HMRC data. HMRC will be sent a copy of the report 7 working days in advance of publication, and the Commission will seek comments relating to the factual accuracy of the report 5 working days in advance of publication.

30. If requested, and appropriate, the Commission will receive pre-release access to statistical publications produced by HMRC (where this meets the relevant conditions detailed in the Pre-release Access to Official Statistics Order 2008).

Analytical collaboration

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

32. Although the SPOCs will be involved in analytical requests, to facilitate analytical collaboration, analysts need to know to whom they should speak directly to. HMRC and the Commission will regularly share lists of analytical leads including contact details covering staff working on:

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

33. To further facilitate collaborative working, analysts in HMRC and the SFC will participate in a Devolved Income Tax Working Group. This group brings together analysts working on issues related to income tax devolved to the Scottish and Welsh Governments in order to:

- share analytical insight and best practice on methods and data, including identifying areas for improvement;

- provide quality assurance where appropriate; and,
- maintain an annual forward look on devolved income tax analysis, aiming to capture known work demands on HMRC analysts for the year ahead.

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

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

Relationship with the Scottish Government

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

Resolving conflicts

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

Costs / charges

38. Generally, HMRC will not charge the Commission for information covered in this MoU that is readily available in a standard format or breakdown.

39. However, if information requested by the Commission is not available to HMRC as standing data, and so would need any form of additional work such as a specific query of IT systems or additional analysis, HMRC will give the Commission an estimate of the cost of the query. The estimate provided should contain details of the time required to complete the request, Travel & Subsistence where applicable, and where possible, a breakdown of the work by HMRC staff grade. The Commission may either agree to pay this cost, or if this information is also being requested by Scottish Government the Scottish Government will work directly with HMRC to cover costs, or the Commission will withdraw the request.

Data protection, handling of sensitive information and FOI

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

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

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

43. Routine or non-sensitive information provided by HMRC and not held in confidence is subject to FOISA. The Scottish Fiscal Commission will consult with HMRC before

responding to requests for such information. However, this consultation is only a courtesy and must not lead to a breach of the statutory deadline for responding to the request. Also, the final decision on whether or not to release the information must be made by the Scottish Fiscal Commission to whom the request was made.

Revisions to the Memorandum of Understanding

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

Signed on behalf of their relevant organisations:

(Signature Redacted)

Her Majesty's Revenue and Customs
Director of KAI
Jane Whittaker

(Signature Redacted)

Scottish Fiscal Commission
Chief Executive
John Ireland

June 2019