

## **SCOTLAND ACT 2012**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS (AND SCHEDULES)**

#### **Part 3: Finance**

#### **Section 23: Taxation: introductory**

80. This section provides the structure within which the Scottish Parliament may legislate on tax. The Act is providing for the Scottish Parliament to set a rate of income tax for Scottish taxpayers; it is devolving stamp duty land tax and landfill tax to Scotland and it is making provision for new devolved taxes.
81. Section 28 of the 1998 Act gives the Scottish Parliament the power to make laws, to be known as Acts of the Scottish Parliament, within the limits set out in the 1998 Act. Sections 29 and 30 of, and Schedule 5 to, that Act specify that tax policy is outside the Scottish Parliament's legislative competence, although an exception is made for local taxes (e.g. council tax and business rates).
82. *Subsection (1)* introduces the amendments made by the section to the 1998 Act.
83. *Subsection (2)* inserts Chapter 1 (new sections 80A and 80B) of the new Part 4A, the remaining Chapters of which deal with income tax and each of the devolved taxes.
84. Section 80A(1)(a) of the new Part 4A introduces Chapter 2, which provides that the Scottish Parliament may set a rate of income tax to be paid by Scottish taxpayers.
85. Section 80A(1)(b) introduces Chapters 3 and 4, which provide that the Scottish Parliament may legislate in respect of the devolved taxes (that is, taxes on land transactions and disposals of waste to landfill).
86. Section 80A(2) provides that the Part may impose restrictions on that power to legislate in relation to devolved taxes.
87. Section 80A(3) provides that a devolved tax introduced by the Scottish Parliament may not be imposed where to do so would be incompatible with the UK's international obligations.
88. Section 80A(4) defines a "devolved tax" as meaning a tax specified in the new Part 4A as a devolved tax.
89. Section 80B(1) provides that Part 4A may be amended by Order in Council to provide for additional devolved taxes or to modify the provisions in relation to devolved taxes.
90. Section 80B(2) provides that an Order in Council under this section may modify any enactment, prerogative instrument or any other instrument or document in connection with other provisions made by the Order. Section 80B mirrors the power in section 30 of the 1998 Act to make changes to Schedules 4 and 5 to the Act.
91. *Subsection (3)* of the section amends section 93 (agency arrangements) of the 1998 Act to provide that the collection and management of a devolved tax is a specified

*These notes refer to the Scotland Act 2012 (c.11)  
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function of Scottish Ministers. This will enable the Scottish Ministers to contract out the collection and management of devolved taxes, should they wish to do.

92. *Subsection (4)* includes “devolved tax” in section 127 (index of defined expressions) of the 1998 Act.
93. *Subsection (5)* provides that devolved taxes, including their collection and management, are excepted from the reserved tax matters, bringing these taxes within the Scottish Parliament’s power to legislate.
94. *Subsection (6)* specifies the legislative procedure to be used in making any Orders in Council under section 80B, by inserting section 80B into Schedule 7 (procedure for subordinate legislation) to the 1998 Act. The Order will be subject to the Type A procedure; an Order must be laid in draft before, and approved by a resolution of, both Houses of Parliament and the Scottish Parliament.