

DEVOLVED TAXES: A POLICY FRAMEWORK

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the Scottish Government's consultation document *Devolved taxes: a policy framework* ('the Consultation') issued on 14 March 2019¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 In order to inform our response, the ATT took part in a joint survey which covered members of the ATT, the Chartered Institute of Taxation (CIOT) and the Institute of Chartered Accountants of Scotland (ICAS). This was aimed at members based in Scotland or those with an interest in Scottish devolved taxes. The survey received 130 responses, of which 52 were ATT members. The results of this survey, combining the responses from all the membership bodies, are appended to this response and also to the joint response from the CIOT and the Low Incomes Tax Reform Group (LITRG). The split of respondents between membership bodies is shown at Q1 of the survey results.
- 1.4 We asked a preliminary question in the survey (Q2) about the impact of devolved taxes on respondents' work to date. Over 50% of respondents said that devolved taxes had had some impact on their workload, primarily due to additional knowledge and training required to deal with the differences in LBTT from SDLT. A number of members also commented on the difficulties that the partial devolution of income tax has created.
- 1.5 We also asked about the impact of further devolution of Air Departure Tax (ADT) and Aggregates Levy (AL) (Q3). The majority of respondents do not expect significant further impact, which is consistent with the fact that most of our members will be focused on providing advice on other taxes such as income tax, corporation tax, VAT etc.
- 1.6 The ATT has had sight of and endorses the joint response from CIOT and LITRG, which provides a detailed summary of the survey responses. We have highlighted some of those responses below as well as making comments of our own.

¹ <https://www.gov.scot/publications/devolved-taxes-policy-framework/pages/1/>

2 Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

- 2.1 Survey responses (Q4) indicate a majority of respondents support the return of the DTC (Devolved Taxes Collaborative) as an annual tax forum.
- 2.2 Given that the original DTC was replaced by separate forums for the two fully devolved taxes, for this forum to be effective and offer something additional it will need to have a clear agenda, circulated in advance, that clearly identifies the gap that the DTC is intended to cover. This will allow interested parties to take an informed decision over whether or not the meeting will be of benefit to them, determine whether or not they have relevant contributions to make and help to manage the expectations of attendees.
- 2.3 We understand that the DTC will operate at a high level, looking at new or emerging tax proposals. It will presumably not be the forum for general operational issues for existing taxes as this would create overlap with existing forums. We have suggested in section 6 below that such a forum might be a good place to pick up and discuss the outcomes of any post-implementation reviews where there are points of more general applicability.
- 2.4 The DTC could also be a suitable forum to raise any issues relating to Revenue Scotland's *Charter of Standards and Values*². For example, participants may appreciate being able to discuss topics such as provision of guidance and whether Revenue Scotland is meeting its Charter requirements in this area.
- 2.5 As a high level forum, in order to ensure the widest range of input from the broadest range of representative organisations, it would be helpful if meetings could be held where there is provision for remote access (live streaming/dial in etc) to overcome some of the challenges of Scottish geography.
- 2.6 To obtain maximum benefit, it would be helpful if attendees could propose agenda items for consideration.

3 Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

- 3.1 When offered the option of responding via professional body, employer or on an individual basis (Q5), the majority of respondents to our survey opted for responding via their professional body. The Scottish Government has good engagement with the professional bodies and we would like to see this continue.
- 3.2 Additional comments from survey respondents (Q6- individual comments redacted) highlighted the importance of changes being thought through thoroughly prior to implementation and reinforced the mutual benefit of the consultation process.

4 Question 3: Do you support the Scottish Government's proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?

- 4.1 Respondents to our survey (Q8) were split on whether issues should be consulted on collectively or individually, with the majority agreeing with the statement that the approach should vary depending on the measure proposed.

² <https://www.revenue.scot/about-us/charter-standards-and-values>

- 4.2 In the Consultation, a flexible approach to consultation is proposed with the Scottish Government offering both informal consultation on technical matters and events for discussion of wider reforms. We consider that a flexible approach is also needed as to whether issues are consulted on collectively or individually.
- 4.3 While some people may advise on all devolved taxes, many people will have more expertise in one area than another. There is a risk that mixing together consultations on unrelated taxes will mean that specific changes in one tax could be missed. Respondents may be deterred from responding if they must first identify and pull out the relevant parts of interest to them from a much larger document.
- 4.4 We welcome the Consultation comments that consultation will be open and extensive and that it is intended, where possible, to allow comment on draft legislation.
- 4.5 We consider that consultation on draft legislation itself is very important as it should help to reduce the need for future amendments and help to reduce unintended consequences. We are slightly surprised at the suggestion on page 15 of the Consultation that draft legislation could be consulted on at the time of the tax consultation. If the particular proposals have got as far as legislation that would very much suggest that the Scottish Government's mind has been made up and that very limited changes, if any, are expected when responses to the consultation are received. That might rather undermine the purpose of seeking feedback.
- 4.6 For new or emerging policies, we would expect draft legislation to be provided *after* an initial consultation on the underlying policy. In contrast, provision of draft legislation at the time of the first published consultation might be appropriate where there is a known issue which has previously been raised with the Scottish Government and amendments are being proposed as part of what is effectively a 'care and maintenance' cycle of legislative changes.
- 4.7 In either case, the purpose of any consultation should be clearly defined in the early paragraphs to ensure that there is a clear focus on the intended objective.

5 Question 4: What are your views on the proposed policy and legislative cycle?

- 5.1 In principle, the cycle of around two years from initial development to implementation should allow sufficient time to develop longer term policies. We have some concerns that the consultation period at both phase 2 and phase 3 will occur between December/January each year. As a significant proportion of our members will be engaged in tax compliance work, this consultation timing would fall directly into the peak self-assessment season when it is very hard for our members to find the time to provide comments and feedback. We would prefer that the consultation period sat more in February or even March to allow our members time to provide more considered responses.

6 Question 5: What are your views on how frequent the cycle should occur – annually or every two years?

- 6.1 The majority of respondents were supportive of the creation of a Scottish Finance Bill (Q10) and that it should be annual (Q11). Additional comments noted that this might encourage more debate before matters are legislated. An annual cycle would also provide a format for making necessary 'care and maintenance' changes. At present there are a number of acknowledged inconsistencies within LBTT which could usefully be addressed in an annual budget cycle.

- 6.2 At this stage, when there are only two devolved taxes, a Scottish Finance Bill would not necessarily have to be a substantial document – there is no need for change for the sake of it - but it would establish a structure and regular cycle which would become increasingly necessary with increasing devolution of taxes.
- 6.3 We welcome the inclusion of a post-implementation review stage, provided that lessons are genuinely learned from the exercise. The DTC forum would be a suitable place to discuss post-implementation reviews as and when they are produced. .
- 6.4 We think that the period of three years (as suggested in the timeline on page 18) between legislation taking effect and the post-implementation could be too long. In the example given, where legislation is implemented in April 2022, the review is scheduled for April 2025. Assuming that the review takes six months, it would not then be fed into the DTC until May 2026 and any benefits of lessons learned will take a further two years to filter through the cycle. We wonder if there is merit in an interim review, which starts 18 months after the implementation of legislation. We have suggested an example of where such an interim review could occur at 8.4.

7 Question 6: Do you consider the existing documents that are published, and the Scottish Government’s approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?

- 7.1 Respondents to our survey had mixed views (Q12) on this aspect. We fully endorse the joint CIOT/LITRG response to this question.

8 Question 7: Do you agree with the Scottish Government’s approach to the circumstances set out in this section?

- 8.1 The circumstances in this section are that there are sometimes exceptions to the general rule of consultation where legislative changes need to be introduced with immediate effect and “in certain circumstances, it needs to be given retroactive effect”. Particular challenges include:
- The impact of the UK Budget and potential market distortions.
 - Forestalling on transactional taxes such as LBTT.
- 8.2 We agree that the Scottish Government need to have the flexibility to respond in a flexible and proportionate manner and agree that this should be considered on a case-by-case basis.
- 8.3 We have some concerns over the use of retroactive effect. There are occasions where this is fair and reasonable (for example to provide relief where legislation has been drafted in a manner such that it operates more harshly than was intended) but on other occasions it can undermine the key objective of taxpayer certainty. The Ministerial foreword to the Consultation notes that “a cornerstone of the Scottish Approach to Taxation is certainty.” Great caution is required when any measure is intended to have retroactive effect.
- 8.4 In terms of forestalling, a recent example of where there is potential for forestalling to occur arose when the Additional Dwelling Supplement (ADS) was increased to 4%. This was announced on 13 December 2018 but came into effect on 25 January 2019. Such a delay does allow limited scope for transactions to be pulled forward. This is in contrast to the position for SDLT in England and Wales, where changes usually take effect from midnight on the day of the announcement. Whether or not the delay in applying the increase resulted in significant forestalling is perhaps something that could be picked up in a post-implementation review –

ideally even an aspect that could be picked up much earlier in the interim review suggested above, so that the benefit of the knowledge and understanding gained would be available for use sooner.

- 8.5 Whether the Scottish Government continues to adopt the approach of announcing a change to LBTT in advance, or moves to the UK approach for SDLT of changes taking immediate effect, the crucial thing for advisers is to be aware of the Scottish Government's intentions. This is because transactions are often in progress at or around the time of the Scottish Budget and advisers need to know whether any estimated LBTT liabilities need to be caveated for the risk of a potential change either on the day, or within the following month.

9 Contact details

- 9.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley on 07773 087125 or hthornley@att.org.uk.

The Association of Taxation Technicians

10 Note

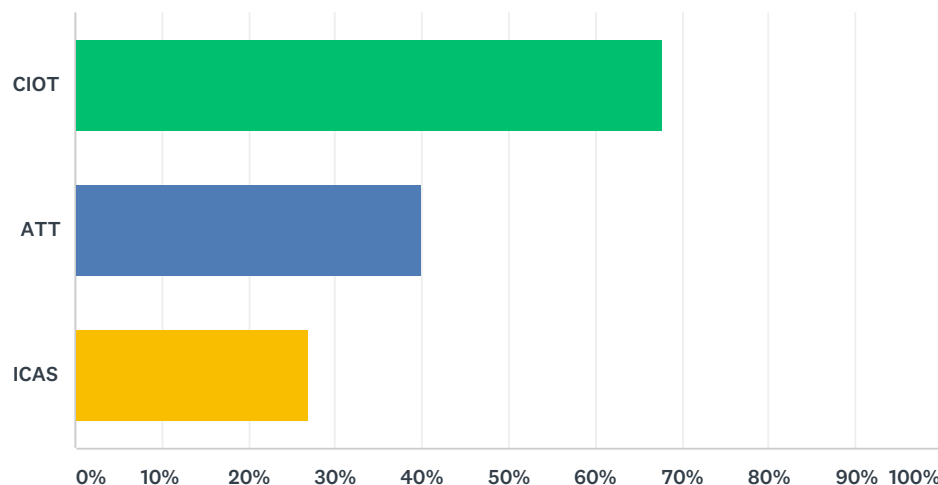
- 10.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

Q1 Are you a member of (please tick all that apply)

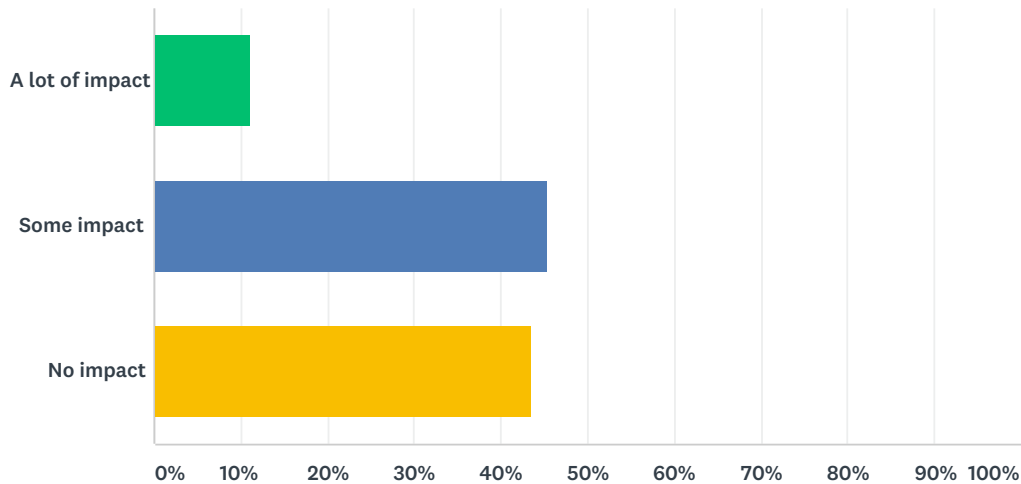
Answered: 130 Skipped: 0



ANSWER CHOICES	RESPONSES	
CIOT	67.69%	88
ATT	40.00%	52
ICAS	26.92%	35
Total Respondents: 130		

Q2 Since their introduction in 2015, what impact have the fully devolved taxes (Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT)) had on your day-to-day work in tax (this might include factors such as cost, time, workload, processes, need for training):

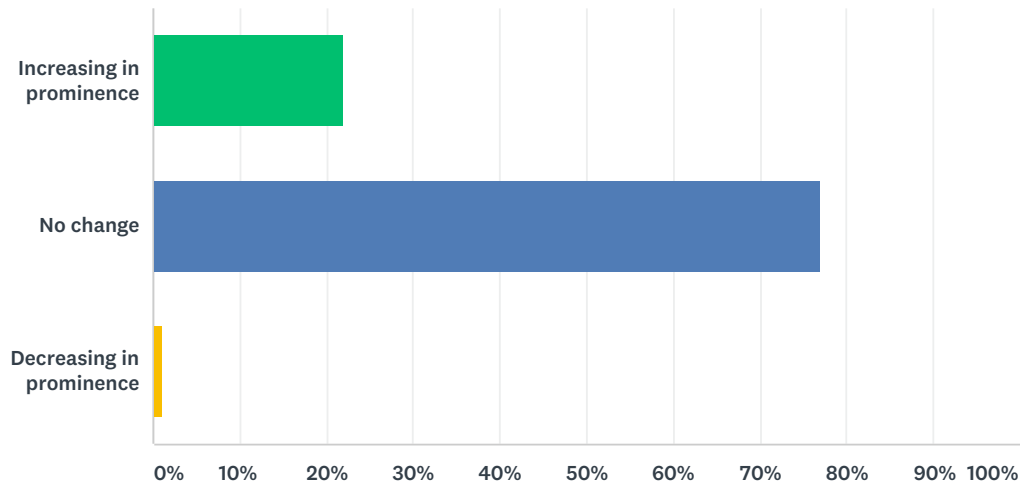
Answered: 99 Skipped: 31



ANSWER CHOICES		RESPONSES	
A lot of impact		11.11%	11
Some impact		45.45%	45
No impact		43.43%	43
TOTAL			99

Q3 Looking ahead to the future, further taxes, such as Air Departure Tax (ADT) and Aggregates Levy (AL), will also be fully devolved. Taken together, do you expect that the fully devolved taxes LBTT, SLfT, ADT & AL will impact on your work by:

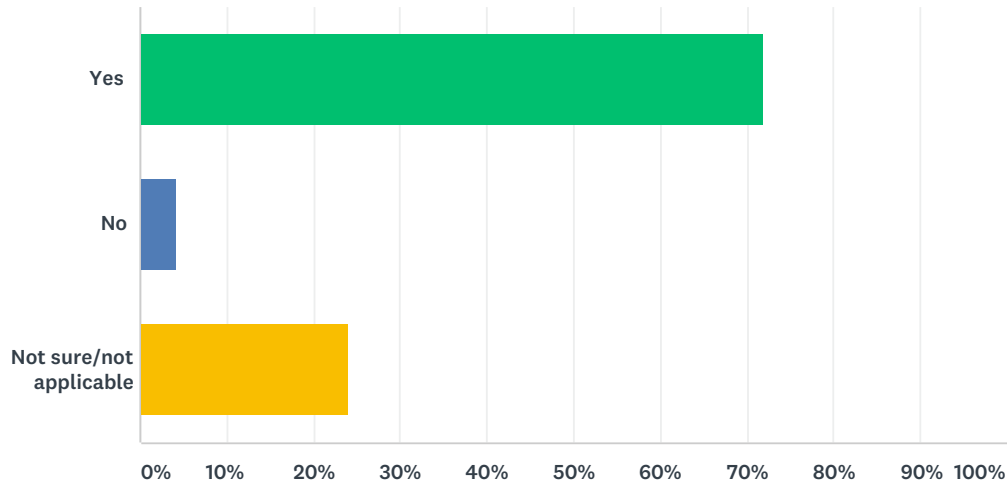
Answered: 100 Skipped: 30



ANSWER CHOICES		RESPONSES	
Increasing in prominence		22.00%	22
No change		77.00%	77
Decreasing in prominence		1.00%	1
TOTAL			100

Q4 Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

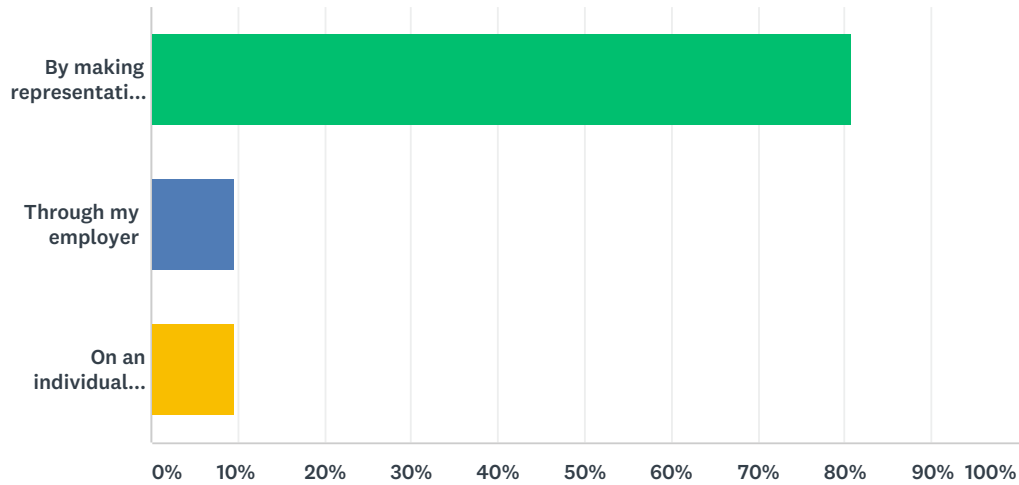
Answered: 96 Skipped: 34



ANSWER CHOICES	RESPONSES	
Yes	71.88%	69
No	4.17%	4
Not sure/not applicable	23.96%	23
TOTAL		96

Q5 What would be your preferred method for engaging with the Scottish Government on devolved tax changes?

Answered: 94 Skipped: 36



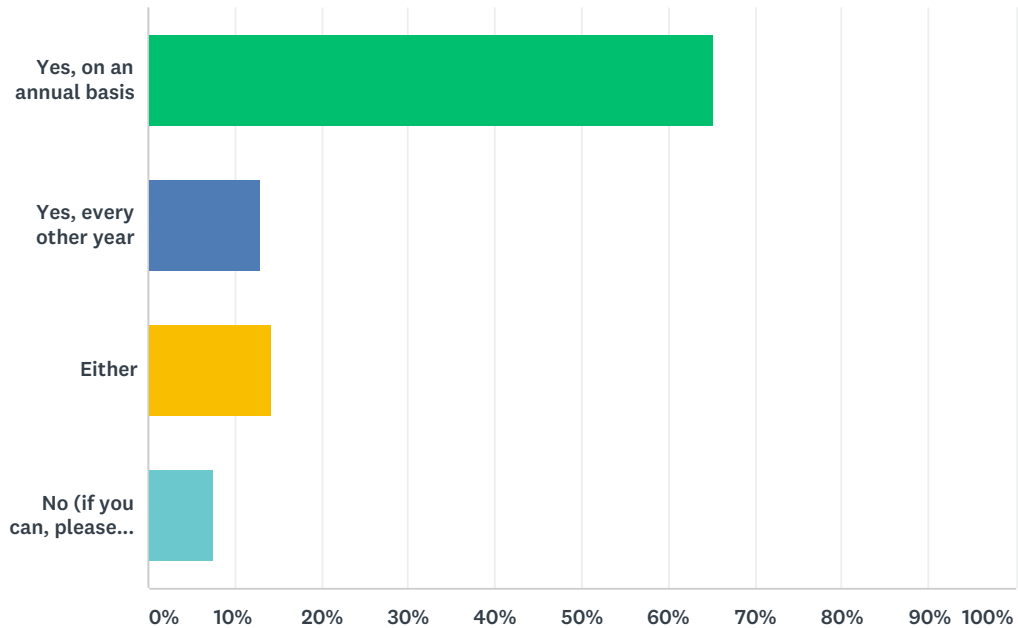
ANSWER CHOICES	RESPONSES	
By making representations through my professional body (i.e CIOT/ATT/ICAS)	80.85%	76
Through my employer	9.57%	9
On an individual basis (i.e email/letter/consultation response)	9.57%	9
TOTAL		94

Q6 Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

Answered: 15 Skipped: 115

Q7 Do you agree with the proposed timescales for the tax consultation?

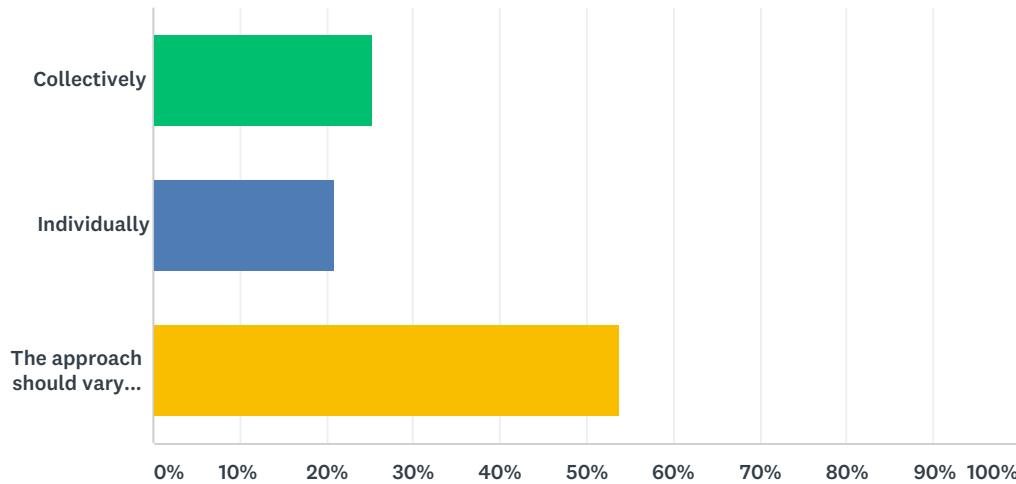
Answered: 92 Skipped: 38



ANSWER CHOICES	RESPONSES	
Yes, on an annual basis	65.22%	60
Yes, every other year	13.04%	12
Either	14.13%	13
No (if you can, please state how regularly you think changes should be consulted on)	7.61%	7
TOTAL		92

Q8 Do you think the Scottish Government should consult on tax changes collectively as proposed (i.e. all tax proposals are contained in a single consultation) or on an individual basis?

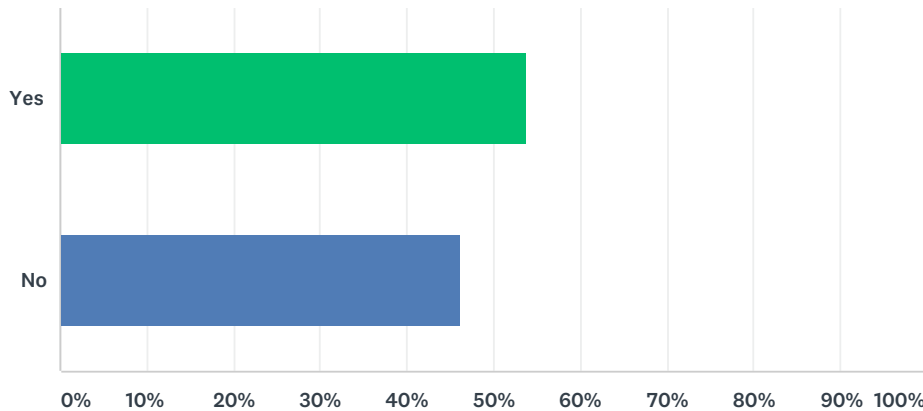
Answered: 91 Skipped: 39



ANSWER CHOICES	RESPONSES	
Collectively	25.27%	23
Individually	20.88%	19
The approach should vary depending on the tax changes involved	53.85%	49
TOTAL		91

Q9 As you are aware, the Scottish Government has committed itself to a tax system underpinned by Adam Smith's four principles of proportionality, certainty, convenience and efficiency. Do you agree that the Scottish Government can continue to achieve a tax system underpinned by these principles?

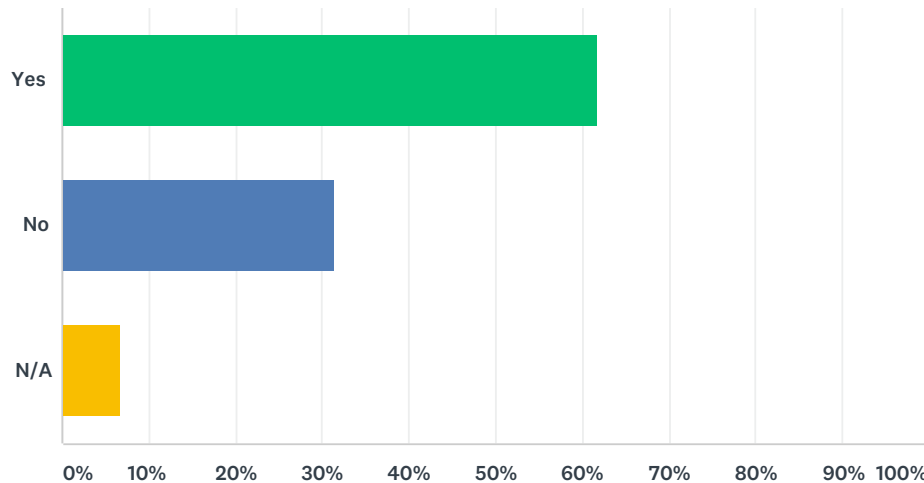
Answered: 91 Skipped: 39



ANSWER CHOICES		RESPONSES	
Yes		53.85%	49
No		46.15%	42
TOTAL			91

Q10 The Scottish Government and Scottish Parliament have established a working group to explore options for an alternative legislative process for devolved tax legislation, including whether there is a need for a Scottish equivalent of the UK Finance Bill. Do you support the introduction of a Scottish Finance Bill?

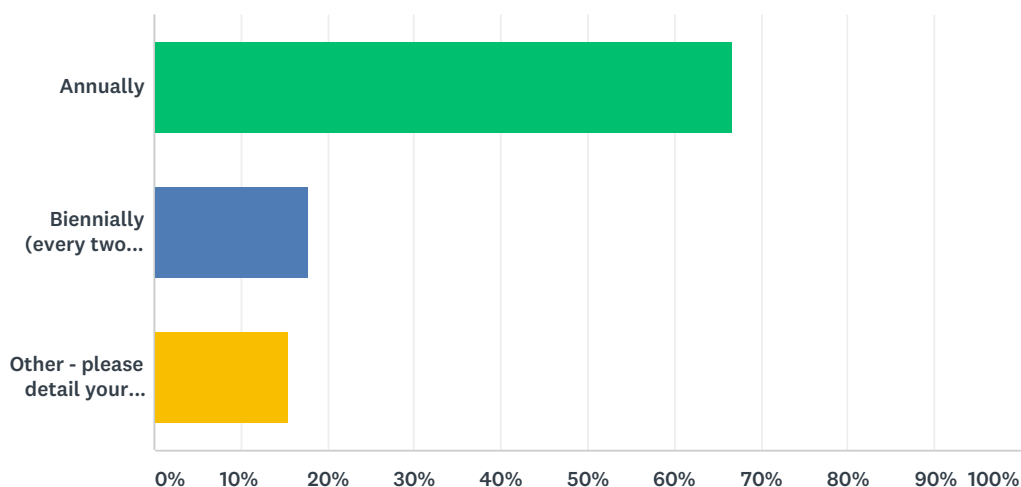
Answered: 89 Skipped: 41



ANSWER CHOICES	RESPONSES	
Yes	61.80%	55
No	31.46%	28
N/A	6.74%	6
TOTAL		89

Q11 Do you think that a Scottish Finance Bill should be tabled:

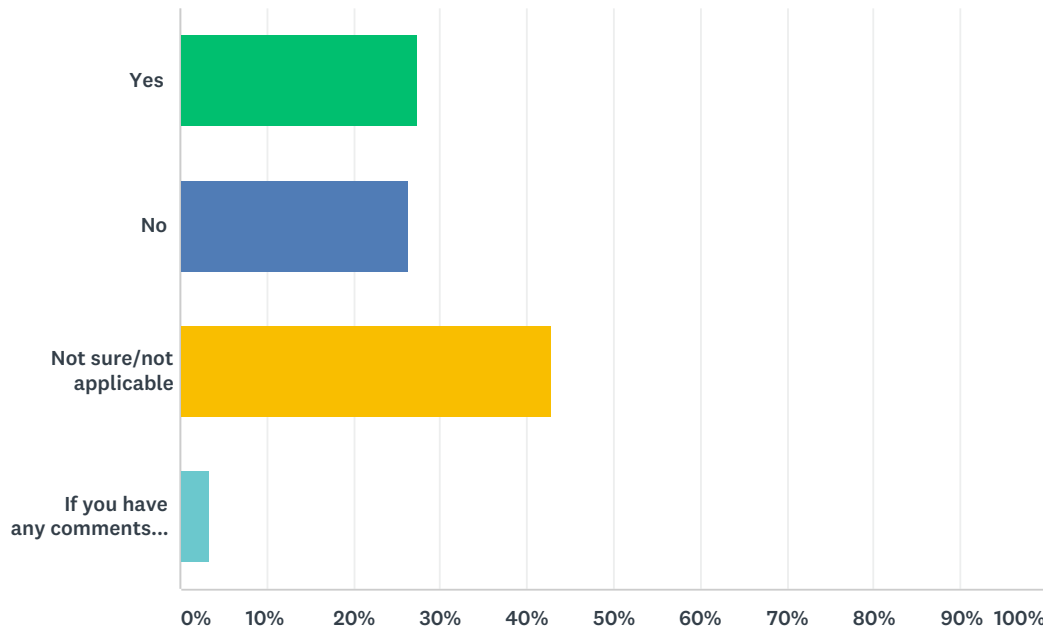
Answered: 84 Skipped: 46



ANSWER CHOICES	RESPONSES	
Annually	66.67%	56
Biennially (every two years)	17.86%	15
Other - please detail your preferred frequency here:	15.48%	13
TOTAL		84

Q12 Do you consider the existing documents that are published by the Scottish Government (i.e a policy memorandum, financial memorandum and explanatory note) to clarify the intention and impacts of a policy sufficient?

Answered: 91 Skipped: 39



ANSWER CHOICES	RESPONSES	
Yes	27.47%	25
No	26.37%	24
Not sure/not applicable	42.86%	39
If you have any comments, please enter them here	3.30%	3
TOTAL		91