A Consultation on Draft Regulations that Prescribe Eligibility Criteria for Appointment to the Scottish Tribunals
Response by the Chartered Institute of Taxation

1 Introduction

1.1 The Chartered Institute of Taxation (CIOT) is pleased to submit comments on the above consultation document in respect of draft regulations that prescribe eligibility criteria for appointment to the Scottish Tribunals, issued by the Scottish Government in July 2015.

1.2 Our response draws on the knowledge and experience of both our members in practice and the in-house technical team.

1.3 Our response is concerned primarily with the draft regulations in respect of ordinary members of the tax jurisdiction of the First-tier Tribunal for Scotland. We have previously responded to a Scottish Government consultation on The Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014.¹

1.4 We make some initial general points and then consider the questions posed in the consultation. In addition, we have included some comments on the draft regulations in section 4 below. We have therefore not included any form of executive summary to our response.

2 General comments

2.1 We note that the draft regulations in respect of tax-related ordinary and legal member appointments will not take effect until the existing Scottish Tax Tribunals become part of the Scottish Tribunals, anticipated to take place in Spring 2017.

¹ Our response is available on the CIOT website: http://www.tax.org.uk/tax-policy/public-submissions/2014/proposed_subordinate_legislation_24_oct
2.2 We note from the outset that the draft regulations in respect of ordinary members of the tax jurisdiction effectively replicate the existing Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014.²

2.3 We agree with the inclusion of general debarment provisions and think these should be extended to former members of the CIOT (see paragraph 3.4 below). The Taxation Disciplinary Board is an independent body that runs the complaints and disciplinary scheme for the CIOT, Association of Taxation Technicians (ATT) and the Institute of Indirect Taxation.³

3 Questions

Q1 - 4 Please let us have your comments on the draft regulations. In particular, are you content with the proposed scope of each of the regulations 2 to 5? Are there any additional criteria you would wish to see prescribed? Are there any proposed criteria that you do not wish to see prescribed?

3.1 We comment on Regulation 4 only, “Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland (tax experience). We broadly agree with the Scottish Government’s proposed approach.

3.2 We welcome in particular the provision for the automatic eligibility of members of the CIOT to serve as ordinary members in the First-tier Tribunal. This was something we had suggested during the consultation on the draft Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014, and which was adopted prior to final publication of those regulations.⁴

3.3 The term “substantial experience” in draft Regulation 4 paragraph (4) is on the surface unhelpful, as it is subjective. We agree that it is necessary to have the possibility of gaining eligibility through experience, and using the term “substantial” is a practical expedient. However, we think there should be some indication as to the meaning of “substantial” in this context. For example, we note that Regulation 2 of the draft regulations requires legal members of the First-tier Tribunal for Scotland to have five years of experience. Consideration should be given as to whether some sort of time limit should also be specified in respect of “substantial experience” for ordinary members.

3.4 Regulation 4 paragraph (5) provides for debarment in certain circumstances where the person is a former member of one of the professional bodies listed in paragraph (3), that is, one of the accounting bodies. We would expect paragraph (5) to apply where appropriate to former members of the CIOT (paragraph (2)). As pointed out at paragraph 2.3 of this response, the Taxation Disciplinary Board can sanction members of the CIOT.

3.5 Otherwise, there are no additional criteria we wish to see prescribed nor are there any criteria that we do not wish to see prescribed.

³ http://www.tax-board.org.uk/
⁴ We refer you to sections 3 and 4 of our response: http://www.tax.org.uk/tax-policy/public-submissions/2014/proposed_subordinate_legislation_24_oct
4  Tribunals and Inquiries

The Scottish Tribunals (Eligibility for Appointment) Regulations 2015

4.1  We propose an amendment to the wording of paragraph (5) in Regulation 4 to take account of our point at paragraph 3.4 of this response. Our additions and amendments are in bold italics:

4.- (5) Paragraph (4) does not apply where a person is a former member of any of the professional bodies listed in paragraphs (2) and (3), ...

5  The Chartered Institute of Taxation

5.1  The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.