

## **ANNEX B**

### **EXEMPTIONS APPLIED**

#### **Section 28(1) – relations within the UK**

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and the [UK Government. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government, the UK Government and the other devolved administrations. The release of these communications about income tax will mean that the UK Government is/are likely to be more reluctant to share such information with the Scottish Government in future, which would reduce both the frequency and openness of communications between the Scottish Government and other UK administrations

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in maintaining good relations between the Scottish Government and the UK Government, and in protecting the free exchange of information between the administrations to ensure that we keep each other fully and regularly informed about matters of mutual interest. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

#### **Section 30(b)(i) – free and frank provision of advice**

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on income tax will substantially inhibit the provision of such advice in the future.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can

provide full and frank advice to Ministers, as part of the process of exploring and refining the Government's position on income tax. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy and decision making process now and in the future, which would not be in the public interest.

### **Section 30(b)(ii) the free and frank exchange of views for the purposes of deliberation**

Some of the information you requested falls under the exemptions under Section 30(b)(ii) of FOISA (the free and frank exchange of views for the purposes of deliberation) apply. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. The exemption recognises the need for officials to have the ability to exchange views freely and frankly. Disclosing the content of the free and frank views on income tax policy could substantially inhibit the provision of such advice in the future.

These exemptions are subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide free and frank advice and views to Ministers. It is clearly in the public interest that Ministers can properly provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

### **Section 38(1)(b) – personal data of a third party**

An exemption under section 38(1)(b) of FOISA (personal information) applies to [a small amount of the information requested because it is personal data of a third party, ie some names of junior grade civil servants and stakeholders attending meetings and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption