



Scottish Parliament
Finance and Constitution Committee
Air Departure Tax (Scotland) Bill: Call for Evidence

10 February 2017

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. This Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members.
2. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors. ICAS is also a public interest body.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

General Comments

4. ICAS welcomes the opportunity to respond to the call for evidence: 'Air Departure Tax (Scotland) Bill', as issued by the Finance and Constitution Committee of the Scottish Parliament on 19 December 2016. We note that "The consultation will examine the overall structure for the tax. The committee is interested in hearing views on how best to achieve the strategic and policy objectives of the bill, the extent to which the key concepts of the bill are appropriate, the appropriateness of the proposed structure for the tax and the proposed administrative arrangements for the payment, collection and management of the tax".¹
5. We refer to the Air Departure Tax as ADT, Air Passenger Duty as APD and Revenue Scotland as RS throughout this document.

Achieving the strategic and policy objectives of the Bill

6. The Business and Regulatory Impact Assessment (BRIA) for ADT issued on 20 December 2016 by the Scottish Government stated that the main aims of the design and structure of ADT would be to boost Scotland's connectivity internationally and help generate sustainable growth. It is not clear how these outcomes are to be assessed or to what extent the ADT will contribute to the outcomes, for example, when critically analysing viable links between increased passenger travel and ADT. In a similar way, we are curious to understand how the calculation of 'sustainable growth' has been defined. Scrutineers of the outcomes of the BRIA and legislation, once enacted, will wish to examine ADT and its standing as a direct cause and effect of sustainable growth so as to attribute viable links between the two and draw reasonable conclusions as to the efficacy of the legislation over time in terms of value for money to the taxpayer.
7. In 2016² ICAS produced a matrix jointly with the Chartered Institute of Taxation (CIOT) setting out the likely consequences of ADT (APD as was) reductions on various taxes and potential revenue growth. We have attached this matrix again, for ease of reference.
8. ICAS has noted in its review of the Financial Memorandum, published with the Bill, that the ADT revenue forecast illustrations appear to be based on current rates and bands of UK APD, which do not reflect the stated position of the Scottish Government in effectively halving the tax liability of airline operators with an ADT regime as compared to APD. This may need to be revisited.

¹ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103012.aspx>

² data/assets/pdf_file/0010/247627/20160603-Submission-Scottish-Replacement-to-Air-Passenger-Duty

The extent to which the key concepts of the Bill are appropriate

9. The draft legislation essentially mirrors the UK APD legislation with a few exceptions; however, we also note there are no specific references to what exemptions will be set out. It would be more appropriate and mitigate unnecessary complexity for exemptions to ADT to be set out in primary legislation rather than relying on secondary legislation.

The appropriateness of the proposed structure for the tax

10. The proposed structure for the tax appears to mirror that for APD and, in this respect, it will be less confusing and require administratively similar work for airline operators.

The proposed administrative arrangements for the payment, collection and management of the tax

11. The proposed administrative arrangements should be workable if Revenue Scotland has the necessary resources to follow through at its end and that the proposed timetable does not clash with other taxes such as Scottish Landfill Tax.

Anything else of relevance

12. We would encourage the Scottish Government to publish a timetable setting out the proposed dates for announcing rates and bands so that all interested parties can plan effectively. The airline industry and software providers need to understand what is ahead so they can plan their budgets and programme software respectively, both of which are likely to require significant lead times.
13. We also consider it important to understand, if the phased reduction to 50% by the end of this parliament is to be achieved, the timetable for this. As at point 12 above, stakeholders need to be able to plan in advance and delays to releasing the information may present business with budgeting issues regarding sales, pricing structures and software issues.

Specific points in the draft legislation

14. Part 2 section 8 of the Bill refers to the amendment of key concepts and we question whether this is appropriate. ICAS does not support the use of secondary legislation to change primary legislation, particularly when this relates to powers such as the setting of rates or key concepts. The granting of powers, duties and functions are an important exercise of Parliament's duties. Such powers should be exercised through primary legislation so that there is full consideration before doing so. Secondary legislation should be used for administrative purposes only, such as how the powers in primary legislation are to be exercised and accounted for. Section 8(2)(b) of the Bill states that the Act may be modified by secondary regulations – surely SIs are meant to be restricted to administrative modifications and not to be used for modifications to primary legislation? (Please see Part 4 section 34 of the Bill for an example of an appropriate amendment by regulation).
15. At Part 3 of the Bill the heading should read 'tax structure and rates', and not just 'tax rates'.
16. Part 4 section 10 (1), (2) and (3) of the Bill states that Scottish Ministers can amend the legislation by regulation. Please see our stance on using secondary legislation to change primary legislation at point 14 above.
17. ICAS considers that further detail should be made available at the earliest possible opportunity regarding the proposed format in which ADT information is to be maintained per Part 4 section 13 (2) and (4) of the Bill. Again, it would be useful for all stakeholders to be aware of this in advance.

18. Clarification is sought about whether there is a conflict with RSTPA 2014 Part 3 regarding taxpayer confidentiality and clause 13(4) of the ADT(Scotland) Bill at section in terms of RS choosing to publish any information 'as it thinks fit'.
19. ADT stakeholders should be aware of what information RS is entitled to make public in advance. At present, it is not clear whether the register will comprise a list of aircraft operators, or whether it is to be the names of the individual travellers which might also be retained. It is also unclear from this legislation whether any passenger information retained by RS might serve a dual purpose – say, to enhance security or anti-terrorism/immigration measures. It would also be useful at this stage to obtain assurances from RS about data protection safeguarding and security measures.
20. At Part 4 section 20(5) (a) of the Bill RS can serve notice at any time to withdraw its approval of a special accounting scheme – clarification is sought on what the time frame is for this – for example, whether it is immediate or with say 30 days' notice.
21. In Part 4 section 28 (2) and (3) of the Bill RS can attach any conditions it thinks fit to a direction under this section. ICAS wonders whether this is a reasonable stance and considers that any conditions should be published and consulted on prior to being implemented. Also in this section, all references to 'person' should instead read 'taxable person'.
22. At Part 4 section 28 (6) of the Bill ICAS considers that it is an unusual stance for RS to assume future non-compliance by charging interest and penalties on a security withholding. Surely it must be the case that penalties and interest are only chargeable after an incidence of non-compliance has been proven, and not on the assumption that non-compliance has taken place by default. Quite apart from the matter of equity, business cash flow could be at risk in the event of such a stance being taken by RS.
23. At Part 4 section 31 (3) of the Bill RS must not give notice to a handling agent who is an individual. ICAS seeks clarification on whether the Scottish Government has considered the scope for avoidance if a taxable person is in financial difficulty and appoints an individual to be his handling agent.
24. At Part 4 section 33 (1) of the Bill clarification is sought on the definition of a 'material inaccuracy'. For example, has a value been attributed to this definition and due consideration given to negligent or deliberate behaviours in reaching the perceived inaccuracy in terms of penalty mitigation process.

Air passenger duty – Impact summary

	Tax and Scottish Revenues ³					
Stakeholder	Corporation tax	Income tax	National Insurance	Value added tax	Air passenger duty	Other – non-tax issues
Tax per GERS⁴ 2013-14	Total £2,817m	Total £11,410m Smith £10,911m SRIT £ 4,258m	Total £8,730m	Total £10,060m Gross £5,030m Net £4,432m	Total £251m	
Scottish government	Share of UK receipts	Will be wholly devolved – benefits from increase or loses from decrease	Share of UK receipts	50% share of any increase or decrease (based on current UK rates)	Wholly devolved – benefits from increase or loses from decrease. If rate reduced by 50%, at first likely to simply have only 50% of previous APD revenues.	Cost of state benefits may be affected by any growth due to reduction in APD
UK government	Benefits from any growth in profits taxable in UK due to APD reduction	Will not share in any benefits or losses	Benefits from any employment growth that increases NIC receipts	Any increase in spending by visitors increases VAT receipts, but possible loss if effect is to encourage UK persons to travel	Unlikely to be any major direct impact as few Scottish airports close enough to rest of UK to encourage switching ⁵ .	Any growth in employment may impact on cost of state benefits.

³ Figures for tax revenues are estimates taken from table 3.1 in “Government Expenditure & Revenue Scotland 2013-14” (March 2015):

<http://www.gov.scot/Publications/2015/03/1422>

⁴ The term “Total” is used to refer to the amount calculated as being revenue from Scotland in “General Expenditure & Revenue Scotland 2013-14” (GERS). Under income tax, the term “Smith” is used to refer to the income tax that would be within the Scottish Government’s power under the latest Scotland Bill, following the Smith Commission recommendations. “SRIT” is used to refer to the amount under the control of the Scottish Government according to the Scotland Act 2012. For VAT, the gross is the VAT receipts that the Scottish Government estimates will be assigned to Scotland before taking into account VAT refunds.

⁵ In a note entitled “Air passenger duty : introduction” prepared for the House of Commons by Anthony Seely on 19 September 2012, HMRC asserted “...analysis indicates that the price elasticity of demand for changes in APD duty rates is low, and air travel has proven relatively unresponsive to changes in price.” However,

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				and spend abroad.		
Revenue Scotland	No impact	No impact	No impact	No impact	Likely to take on administration and collection of APD	Costs of upskilling Revenue Scotland; also costs of changing the tax; IT costs.
Airlines	May pay more corporation tax if UK profits increase, but some airlines may not be wholly subject to UK corporation tax.	No impact	May have to pay more employers' NIC if reduction in APD leads to more employment	Air travel is not subject to VAT in the UK so impact will be minimal	Substantial gains but these may be reduced if passed onto customers in lower fares, although the UK paper to the House of Commons – see footnote – on APD asserted that the demand for travel is relatively inelastic.	Some administrative benefit if APD abolished, but this is likely to be minimal as APD systems may have to be retained for other countries including the rest of the UK. The airlines are likely to consider a number of non-tax issues when deciding whether or not to develop new routes from

other studies reach different conclusions. The current rates of APD for travel up to 2,000 miles is £26 standard and £13 reduced. There is no tax on children under 12. Thus for a family of four the saving could be as little as £26 (two adults at the reduced rate).

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						Scottish airports, for example, availability and cost of slots; likely feasibility of route in terms of passengers; infrastructure.
Operators of other forms of transport (bus, train, coach, taxi, ferry etc.)	May pay less corporation tax if UK profits decrease	No impact	May pay less NIC if reduction in APD leads to less employment due to a fall in customers	Most other transport (except taxis) is zero-rated so unlikely to be a significant VAT effect	Reduction in APD reduces cost of air travel of employees, but reduction partly offset by corporation tax – net benefit will be about 80% of reduction.	Possible opportunities for routes connecting to airports if a significant number of passengers find it acceptable to travel to avoid APD, but seems unlikely.
Business – company	If profits increase due to lower travel cost by employees, increase in tax paid, but mostly negligible	No impact	As for airlines	Any increase in business activity e.g. more visitors to a hotel, will result in more VAT payable	Reduces cost of air travel of employees, but reduction partly offset by corporation tax – net benefit will be about 80% of reduction.	In the main, the cost of APD is unlikely to outweigh the cost or inconvenience to a business traveller of not travelling from his or her nearest airport.

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Business – individual	No impact	If profits increase due to lower travel cost causing increased demand, increase in tax paid but mostly negligible	As for airlines Also increase in class 4 NIC	As for company businesses	Reduces cost of air travel, but reduction offset by income tax and class 4 NIC increase – net benefit could be less than 50% of APD reduction	Possible impact on state benefits entitlement due to higher net income
Employees and jobseekers	No impact	Increase in demand may provide job opportunities but the travel and retail industries usually pay low wages, so probably minimal income tax effect. Note also that UK government controls level of personal allowance and this will be linked to the National Minimum Wage	Most new employees will pay NIC because earnings will be over the threshold of £8,060, but this may be different for part-time workers including those on zero-hour contracts.	No impact unless they are also travellers, when there is an impact on their employer's business - see below.	Reduced cost of travel where they travel on business as employees	Possible impact on state benefits as above
Travellers from	No impact	No impact	No impact	Scots travellers	Reduction in	Reduction may

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Scotland to overseas destinations				will buy goods and services overseas and pay VAT there and not in Scotland	travel cost by £26 per traveller over 12 (standard) and £13 (reduced) if journey less than 2,000 miles, or by £142 (£71) if over 2,000 miles.	stimulate travel from Scotland. For 4 passengers over 12, the saving could be £568 – worth a train journey in some cases. As noted, business travellers are unlikely to see £142 (£71) as worth the additional travel time
Travellers from Scotland to other UK destinations	No impact	No impact	No impact	Passengers will presumably pay VAT on goods and services in the rest of the UK instead of Scotland	Reduction in travel cost	It seems unlikely that there would be a significant increase in air travellers from Scotland.
Travellers to Scotland from overseas destinations	No impact	No impact	No impact	Increase in VAT due to spending on hotels, restaurants and retail goods, but note minimal impact from	Reduction in travel cost	The question is whether there would be a significant increase in passengers because of lower APD in Scotland –

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				business travel as that VAT is potentially refundable.		e.g. London attracts more visitors even though its accommodation costs are significantly more. It may only change the sequence of travel.
Travellers to Scotland from other UK destinations	No impact	No impact	No impact	Shifts some VATable spending from UK to Scotland, but may not be significant.	Reduction in travel cost	Far more travellers are likely to use other transport, so the potential increase in passengers is probably minimal.
People who do not travel by air	No impact	No impact	No impact	No impact	No impact	Whether a reduction in APD encourages these individuals to use air travel in future is moot. Other factors than cost – convenience; time; personal preference re mode of transport

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						– will play a part
Environment	No impact	No impact	No impact	No impact	Reduction in APD potentially reduces the tax's environmental impact, but note that APD was not intended to be an environmental tax and, if it does not greatly increase or decrease the demand for travel, it may have minimal impact anyway.	APD does not in and of itself encourage 'green' behaviours – for example, it does not encourage airlines to fill planes or use greener planes