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Views sought on building safety levy
proposals - gov.scot



Scottish Government consultation: “Views on the proposed introduction of a Building Safety Levy on new residential development in Scotland” ICAS response

ICAS response to the second Scottish Government consultation on the Scottish Building Safety Levy proposals – closing date: 18 November 2024

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

3. ICAS welcomes the opportunity to feed into the UK & Scottish Governments' work in respect of devolving powers for a Scottish Building Safety Levy (SBSL). We generally welcome the proposals to devolve the taxing power to Scotland under Section 80B of the Scotland Act 1998 (as amended) which is in line with the Programme for Government announcements made in 2023/24. We have set out below a list of tax-related considerations which we consider need to be considered regarding this process. Devolution does add complexity for the taxpayer as well as additional accountability for the devolved jurisdiction, so the scope and policy intention for the levy need to be carefully thought through.
4. ICAS also welcomes the opportunity to participate in helping to shape policy, legislative provisions and guidance as an active participator and trusted stakeholder on the forthcoming expert advisory group.
5. We consider it essential to ensure that the legislation and guidance is well publicised to the public and to those providing professional services to their clients in good time. Historically we have found that generally speaking, awareness of Scottish taxes is not high in Scotland¹ and there is a need for improvement of communications by the Scottish Government to ensure this improves, in line with the Scottish Government's own Framework for Tax principles.
6. ICAS, along with other professional bodies and stakeholders, continues to call for care and maintenance provisions in the form of a regular fiscal Bill which allows for a point in time at which all amendments to legislation are carried out rather than undertaking piecemeal changes to tax legislation, which

¹ [ICAS joins forces with CIOT to call for review of the Scottish tax system | ICAS](#)

the public as well as tax and legal professionals find difficult to follow and locate. It is far easier to refer to a Finance Act or equivalent when researching legislative updates than it is to have to search through discrete legislative provisions and SSIs to ensure one has a correct and complete understanding of the current law in place.

There have been various examples of ad-hoc changes being made to LBTT in the years since it was introduced, but a more recent example is the Scottish Aggregates Tax and Devolved Administration (Scotland) Bill, which contains two parts – part one dealing with Aggregates Tax and part two dealing with amendments to Revenue Scotland powers and LBTT-related amendments – i.e. unrelated to the taxation of Aggregates. If all the changes made in 2023/24 were wrapped up in one Finance Bill, there would be no need to search elsewhere for them, which is more transparent. The more devolved taxes which are introduced, the greater the need for fiscal transparency. The same principles should therefore apply to a Scottish Building Safety Levy (SBSL) and to the Revenue Scotland and Tax Powers Act 2014.

Specific comments

7. This response by ICAS relates to taxation matters only and does not offer comment on any other matters. As such, only certain questions have been responded to from the question bank, as follows:

1. Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government's Cladding Remediation Programme?

8. The word “fair” is completely subjective and can be interpreted in any number of ways. In terms of imposing the tax on developers, some developers may have been involved in the original works where what is now deemed dangerous cladding was placed on buildings, whilst others will not have been. The round table meetings we have attended demonstrated that many developers deeply resent the proposals and consider them to be inequitable – that they are being punished for something that they did not do. In any event, it appears likely that any costs borne by the developer will need to be passed on due to the existing struggles in the sector with tight margins, cash flow and profitability, and it therefore seems ever more likely that the house buyers will ultimately fund the levy upon purchasing a property.
9. Another aspect of fairness is around the scope of the remediation works and the total cost – which will undoubtedly rise over the life of the remediation programme, currently estimated at 15 years. The Scottish Government has not yet completed its assessment of what funding will be required and therefore cannot provide anything other than an estimated forecast of the likely tax cost to the developers who may eventually be deemed to be within the scope of the tax charge. Although there is nothing technically wrong with setting up the legislative provisions and preparing the ground for the tax, having exploratory talks etc, it is extremely difficult for Scottish government officials to have sensible and practical conversations with stakeholders when there are still so many unknowns. It therefore seems that the proposed start date of the SBSL may be premature and further discussions should be had once the assessments are fully complete and reports can be read by stakeholders.
10. An important aspect of fairness is certainty for the taxpayer. At present, there is not enough information available to give taxpayers of the SBSL certainty to be able to carry out essential financial forecasting and business planning.

11. With the above issues in mind, the SBSL should be introduced in line with the Scottish Approach to Taxation, and the Scottish Government's six taxation principles which incorporate the four Adam Smith canons of taxation: of certainty, convenience, efficiency and proportionality.

2. Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety Levy?

12. We understand that many developers consider Affordable Housing (AH) may be excluded simply due to the Scottish Government's need to meet its own targets for making AH publicly available. The unintended consequence of this is that there could be a perception that the desire to meet its own targets conflicts with and is resulting in a lack of sympathy towards developers' liabilities and added cost burden, which might be diluted if AH was included in the SBSL regime. ICAS considers that the possibility of tiering the tax charges and considering exemptions more fully should be examined in more detail as more information on the assessments becomes available. At present, it is unclear as to what any definitions around exemption might contain.

5. Are there any other exemptions from the Scottish Building Safety Levy that you think should be considered by the Scottish Government?

13. Micro- developers could potentially be exempted subject to limits and thresholds – but this needs to be looked at carefully in terms of potential avoidance behaviours and suitable anti-avoidance mechanisms put in place to counter unwanted behaviours.

8. Do you agree that the rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

14. ICAS does not offer commentary on tax rates generally. However, in terms of what the rate(s) should be calculated on, ICAS considers that whilst it could potentially be possible to set an independently assessed Market Value (MV) of a property at a given point in time (e.g. on the date of certificate of completion) upon which to assess the SBSL, another option, which appears more equitable than the MV route, would be that the levy is based upon the net cost of construction upon obtaining the certificate of completion. Care needs to be taken in relation to the principles of equity and proportionality in this context, and the likely levels of non-compliance if the SBSL is thought to be unduly cost-heavy by developers – clearly, the MV route would be more costly in the vast majority of cases, assuming the objective of the developer is to turn a profit from developing housing. Provision of independent MV work will carry a cost in addition to the cost of paying the levy on that valuation.

15. Care also needs to be taken in terms of legislative drafting to ensure that avoidance methods are adequately addressed, and valuations are independent and transparent. Unintended consequences must also be carefully considered – for example the potential for widespread MV deflation, in the event the MV route was enacted. The Scottish government could consider whether additional incentives and reliefs could be introduced as a way of encouraging developers to re-develop brownfield sites.

14. Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

16. It makes sense from an efficiency perspective – but the importance of communications and guidance on this cannot be understated if the administration and collection regime is to differ from that of the rest of the UK – especially where UK-wide developers are concerned. Complication inevitably arises where reporting is carried out in two different manners in different jurisdictions. ICAS is keen to be involved as a stakeholder and trusted adviser on the development of legislative provisions and guidance for taxpayers and agents.

17. Due consideration must also be given to any potential transitional and bedding-in provisions relating to the levy itself and to administration and collection, penalties, disputes and enforcement. We note that these are not part of the current consultation, but it is important for developers to have the certainty of knowing what treatment might be given to projects that are ongoing at the time of the introduction of the SBSL, and what levels of tolerance will be given to taxpayers for late returns or incorrect returns in any bedding-in period, for example.

15. Which of the following schedules do you think is the most appropriate for the frequency of returns

18. ICAS considers that this is a matter for Revenue Scotland, but something which aligns with LBTT arrangements may be the most viable option and it will assist with cash flow and be less administratively burdensome (for both developers and Revenue Scotland) than doing a unit-by-unit return. We assume that there will be a provision for estimates to be submitted where figures have not been finalised but that a correction can be submitted within a certain timeframe if necessary.

16. Do you agree that, in relation to a Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out above?

19. Ideally speaking, the powers would generally mirror those of other Scottish taxes to avoid confusion, opacity and uncertainty.

18. What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Levy?

20. Where there is persistent non-compliance ICAS would envisage there being a suitable process for imposition of reasonable sanctions – but we would welcome further discussion on how this would translate into reality. It would help the tax system to be more transparent and simpler to comply with if the sanctions across all Scottish taxes were based on the same principles.

21. What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

21. A sunset clause is appropriate for this tax because there will come a time when no further remediation work of unsafe cladding will be required once the works are completed. At present ICAS understand this to be a project which is estimated to last 15 years. Clearly, this will require regular reviews with transparent forecasting which factors in inflation and issues which present delays to the anticipated end date. Stakeholders will need to be appraised of any information which will require them to pay more, or for longer, than originally anticipated so that accountability is clearly visible throughout the lifespan of the SBSL.

22. Do you think there should be a regular review for the Scottish Building Safety Levy?

22. A regular review of the operation of SBSL is sensible. As with other legislation there is often the need to make small changes which become apparent as things evolve.

Finally...A note on sustainability

23. ICAS considers that it is necessary to factor sustainability into assessments of impacts of taxation given its ever increasing importance. Ideally with the introduction of any new tax, reassurances should be set out that sustainability related matters have been appropriately considered and woven into the creation of the tax where appropriate.

24. In this case, a form of cross-reporting with the Scottish Environment Protection Agency and the Scottish Landfill Tax compliance mechanism may be needed. This would ensure that all the waste generated by the remedial works will be fully disposed of with complete supporting audit trails; and businesses and individuals held liable for illegal dumping or inadequate disposal of hazardous materials. There would also be a need to ensure that contaminated land on brownfield sites is fully and properly remediated in an appropriate way, etc.

25. It is important that decisions made at government level seek to take account of the government target to be net zero by 2045, ensure a reduction in carbon emissions and that sustainable behaviours and practices are encouraged.



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