



Scottish Government

**Consultation on the Principles of a Local Discretionary Transient
Visitor Levy or Tourist Tax**

2 December 2019

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants 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 22,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
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 is grateful for the opportunity to contribute its views to the 'Consultation on the Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax' published by the Scottish Government in September 2019. ICAS was also pleased to be able to discuss the consultation document with Scottish Government officials on 31 October 2019.
5. We have restricted our comments to matters in our area of expertise, which is the operational aspects of taxation.
6. We understand that the aim is to introduce a charge on commercially let accommodation, such as hotels, B&Bs, Air BnB, and campsites. It will be important that there is a level playing field and that this tax does not lead to behavioural changes across the accommodation providers.
7. In broad terms, we believe that the tourist levy should be based on a national policy whilst offering local rate setting. This should help provide ease of operation for businesses and prevent confusion amongst stakeholders and taxpayers (with the same policy, processes, forms etc), whilst allowing local authorities discretion in the amounts charged. All of this is in the context that Scotland should be seen as a welcoming place to visit.
8. The administration, collection and compliance aspects of the tax need to be borne in mind, given that it will be the businesses in the tourist industry which are relied upon to collect the tourist levy. Burdens on business need to be kept to a minimum where possible – and administrative cost is generally underestimated, for example, the cost to business of updating systems to deal with changes.
9. The approach by the UK Government over the last decade has been to make businesses more directly responsible for collecting taxes – building on the VAT and PAYE systems which have operated so successfully in the UK for many years. The changes have included the introduction of Real Time Information (RTI) for PAYE, the administration of the National Minimum Wage, pensions auto-enrolment, and changes to VAT place-of-supply rules. The public finances are thus heavily dependent on this work by businesses as unpaid tax collectors (albeit there is also an acknowledged burden on public sector employers). Care is required not to overburden or disengage businesses from cooperating with these measures.
10. The role of tax reliefs in any tax system needs careful evaluation. As a general principle ICAS supports a broad base and consistent low rates without a widespread use of tax reliefs, which add to complexity and hence administrative costs. Careful consideration needs to be given to proposed new reliefs. Other points to consider in relation to reliefs:
 - Should there be reliefs and, if so, for what purpose?
 - When and how will their effectiveness be evaluated?
 - Will there be "sunset" clauses?

- How do you prevent reliefs becoming avoidance mechanisms?
 - Do they then become unduly complex?
 - What are the alternatives – grants?
11. From an operational aspect, restricting the use of tax to the provision of certain goods or services in the tourist sector is limiting, adds to the administrative burdens, and reduces flexibility around spending decisions. If the Scottish Government priority is for this revenue to be spent on tourism, a form of definition needs to be placed upon the term 'tourism' for this purpose.
 12. In addition to the need for accountability by local authorities on the additional funds raised, appropriate arrangements for monitoring implementation and performance, impact assessment (as this is new and stakeholders need to know how well this policy is meeting its intention, costs, stewardship etc.) and public reporting should be put in place. Post implementation, will local authorities be able to demonstrate that measures are meeting the objectives set? Can the cost of collection be supported by evidence?
 13. Consideration needs to be given to how these arrangements will affect existing funding arrangements, for example, some local authority areas may do well out of this, some less so if they are low tourist areas - but will it mean any adjustment to the central Government grant allocation to local authorities, if the balance of allocations is disrupted? ICAS considers that as much legislation as possible should be within primary legislation. Careful thought needs to be given to which parts of the local and national elements of this tax should be placed within primary legislation and which are placed in accompanying guidance.
 14. As with any taxation regime, a dispute resolution mechanism should be legislated for to allow for an appeals and escalation process.
 15. In accordance with Adam Smith's Canons of Taxation, no tax should cost more to collect than it brings in. If "cost" includes the compliance burden on both the private and public sectors, has adequate consideration been given to using the existing business rates mechanism, with a supplement payable by accommodation providers and, if desired, shown as pro forma/memo on hotel bills, to make it clear that the cost is being passed on.

Specific responses to consultation questions

Q1. Do you think that the design of a visitor levy should be set out:

- a) wholly in a national framework
- b) mostly at a national level with some local discretion
- c) mostly at local level with some overarching national principles.

17. A tourist tax may lend itself to being set and administered at a local level by local authorities because:

- the tax base may be localised, and
- there is little scope for the respective tax bases to relocate across local authority boundaries.

18. On the other hand, it may be more efficient given the large number of local authorities to have one tax designed and applied nationally with, say, flexible locally applied rates. This would offer consistency of design, whilst enabling the local authorities to set local rates of visitor levy.

19. Across Scotland, businesses may be expected to collect and administer the levy, and this will be less burdensome to operate if there is consistency of design, process, and forms. Business wants certainty and consistency so it would be helpful to have a national, uniform policy. This would also assist with tax transparency and data relating to the economic impact of the levy.

Q2: Is an overnight stay in commercially let accommodation an appropriate basis for applying a levy on visitors?

20. Yes, although depending on the basis of charge this could be either a levy on accommodation or a levy on visitor spending in hotels – see question 4 below. The terms “visitor”, “overnight stay” and “commercially let accommodation” should be clearly defined. Common definitions are likely to aid uniformity and transparency although local authorities would need to agree those common definitions.

Q3: Which of the following activities do you think a visitor levy could be robustly applied to and enforced, and how?

Day visitors not staying overnight

Cruise ship passengers who disembark for a day before re-joining the vessel

Wild or rough camping, including in motorhomes and camper vans

21. It may be relatively straightforward to administer a disembarkation charge on visitors from cruise ships, but the other suggestions above are unlikely to be easy to identify, operate or to police. It is also important to take into account disembarkations from locations in other local authority areas – an example being Rosyth in Fife, from which tourists can be bussed directly to Edinburgh and are thus unlikely to spend any time or money in Fife.

22. Other potential areas of difficulty could be sleeper trains, hospice or respite care for relatives of patients and private members' clubs. Due care and thought must be given to the precise wording used. It may also be helpful to have a list of examples or guidance to assist taxpayers and operators. Please see our response to question 11 at paragraph 38 below.

Q4: The consultation paper sets out four options for the basis of the charge (section 5.1). Please tick which one you think would work best in Scotland?

Flat rate per person per night

Flat rate per room per night

A percentage of total accommodation charge

Flat rate per night dependent on the quality of accommodation

23. Clearly, the simpler the levy the easier to administer and collect; however, the simpler the levy the less nuanced it will be to reflect, say, ability to pay.

24. A percentage levy should broadly reflect ability to pay.

25. A percentage levy may have less visibility and feel as though it is part of the overall cost, whereas a per head separate levy is likely to be more visible.
26. Operationally, it may be attractive and appear relatively simple to charge a percentage of the visitor's bill but further questions then need to be teased out – is the percentage levied on the accommodation element only (and this would remove some of the simplicity if the bill needed to be itemised with only a certain proportion giving rise to the charge; there may be issues about allocation of spend to accommodation and to food); or is the percentage to be levied on the total bill, in which case the charge would be a visitor levy on all spend in the accommodation provider (and this might drive behaviour to spend as little as possible in the hotel).
27. A flat rate per person or per room may need more in set up processes and mechanisms for providing an audit trail.
28. Whichever option is chosen, a common national basis for charge would aid transparency and understanding. Different local authorities selecting different bases would be likely to lead to confusion for providers and visitors alike.

Q5: In addition, for each option in Q4 what are the considerations for accommodation users, accommodation providers and local authorities.

29. No comment.

Q6: Do you think that the basis of the charge should be set out in a national framework, or be for a local authority to decide?

30. The basis of charge should be set out in a national framework with specific reference to the Scottish taxation system and powers.

Q7: Do you think that the rate of the visitor levy should be set out in a national framework or should it be for the local authority to decide?

31. In broad terms, we believe that the tourist levy should be based on a national policy whilst offering local rate setting. This should help provide ease of operation for businesses and prevent confusion amongst stakeholders and taxpayers (with the same policy, processes, forms etc), whilst allowing local authorities discretion in the amounts charged.

Q8: What factors should be considered to ensure the rate of the visitor levy is appropriate?

32. This should rest with the local authorities, which should decide the rate dependent upon its local circumstances and needs. Zero-rate and opt out options should also be available.

Q9: If the rate of the visitor levy were to be set by individual local authorities, should an upper limit or cap be set at a national level?

33. This should be part of the overall design of the policy, and therefore set at national level. For example, if Edinburgh decides to set the rate at 20% it could deter tourism for other parts of Scotland, as Edinburgh is a gateway.

In relation to Q10 - The Scottish Government is of the opinion that there are some groups that it would be unacceptable to impose a visitor levy on under any circumstances. These include:

- Homeless people
- Asylum seekers/refugees
- Travelling communities (such as Gypsy travellers and other traveller communities)
- Victims of domestic abuse placed temporarily in refuges or short term accommodation because their normal home is unsafe for them to stay in
- Those placed temporarily in refuges or short term accommodation because their normal home is unsafe for them to stay in.

Beyond these groups, other groups could be included for exemption either at the national or local level.

Q10: Do you think that all exemptions should be the same across Scotland and therefore set out in the national legislation, or should local authorities have scope to select some exemptions?

34. There is a question as to how the tax is constructed – is the aim to identify who will be included? Or will the tax be all encompassing and then list exemptions? What will be the qualifying criteria? Who will be likely to gain and lose from the proposals?
35. As a general principle ICAS supports a broad base and consistent low rates without a widespread use of tax reliefs and exemptions, which add to complexity and hence administrative costs. Careful consideration needs to be given to any proposed exemptions.
36. Any exemptions should be the same across Scotland and local authorities should not have any discretion. This tax should be kept as simple as possible.

Q11: Which additional exemptions from the list below do you think should be applied to a visitor levy?

- *Disabled people and registered blind/deaf and their carers*
 - *Those travelling out with their local authority area for medical care, and their carers*
 - *or next of kin*
 - *Children and young people under a certain age*
 - *Students*
 - *Long stay guests (e.g. people staying for more than 14 days)*
 - *Business travellers*
 - *Local resident (paying for overnight accommodation within the local authority in which they reside permanently)*
37. Having a long list of exemptions can create difficulties where the definitions and the related avoidance behaviours which may arise from them are concerned. How will their conditions or special circumstances be verified? Student and homeless hostel accommodation could potentially be specifically exempt subject to the correct definitions being set out, but it should not be necessary for other exemptions to exist. Otherwise, the legislation and guidance will become too complicated. Please see our response to question 3 at paragraph 23 above.

Q12: Are there any other exemptions that you think should apply?

38. Those listed in the paragraph above question 10 (i.e. those upon which it is *unacceptable to impose a visitor levy on under any circumstances*) and students could be exempted with strict definitions of each category and in what circumstances the exemptions should apply.

Q13: What is your view of the proposal that accommodation providers should be ultimately responsible for the collection and remittance to the appropriate local authority, even if the tax is collected by a third party booking agent or platform

39. There is a need for clarity and certainty about who is responsible for administration and collection and so, the obvious point is at the point of delivery, with appropriate sanctions for unscrupulous operators.

Q14: If accommodation providers were required to remit visitor levies after the overnight stays to which they relate (even if the payment was made well in advance) how frequently should the levies collected be required to be remitted to the levying local authority?

40. Quarterly, for example in line with VAT returns, for the sake of simplicity. Aligning remittances with the timetable for business rates might also be a viable option.

In relation to Q15 - It will be necessary for accommodation providers to collect information from visitors to apply the visitor levy correctly and retain records to demonstrate compliance. This information may vary depending on the basis of the charge. It will be essential that local authorities and accommodation providers comply with General Data Protection Regulation (GDPR) in handling personal data.

Q15: What information should an accommodation provider be required to collect and retain to ensure compliance?

Please list below and explain why you think that information is needed for the four different scenarios below:

If the basis of the charge is on a:

- a) flat rate per person per night*
- b) flat rate per room per night*
- c) percentage of total accommodation charge*
- d) flat rate per night dependent on the quality of accommodation*

41. The processes and information required need to be sufficient that authorities can audit the visitor levy and yet simple enough for the accommodation provider to comply with ease.

Q16: How can a local authority choosing to apply a visitor levy ensure it has a comprehensive list of all those providing overnight accommodation on a commercial basis in their local authority area?

42. It would be for the local authority to determine this information from non-domestic rates information as well as from other sources where this information exchange is possible and not prohibited due to confidentiality and data protection restrictions.

Q17: What enforcement powers should a local authority have to ensure compliance and prevent avoidance and evasion by accommodation providers?

43. A proportionately balanced penalty regime could be implemented with a transitional period of one year.

Q18: Should non-compliance by an accommodation provider be subject to a civil penalty (i.e a fine) and if so, what would be the appropriate level be?

44. Yes, civil penalties should be used to discourage non-compliance. The amount (s) should be proportionate and reasonable to the circumstances. Penalties should never be used as a revenue-raising tool, but as a last resort measure – education, awareness-raising and simplicity should be primary means of achieving preferred behaviours.

Q19: A list of requirements that local authorities could be expected to meet before being able to introduce a visitor levy is summarised below. Do you agree or disagree with these options. (please tick the appropriate box) If you have any other suggestion for requirements then please add these in the box below together with your reasons

Produce an initial statement of intention to consider introducing a visitor levy
A timeframe for introduction of at least one financial year following conclusion of consultation and engagement activities
Have held a consultation in their local area to gather views from all those who will be affected by the visitor levy
Have conducted required impact assessments

Have assessed the administrative burden on businesses and taken steps to minimise this
If the legislation allows the rate to be set locally the local authority has demonstrated why the chosen rate of the visitor levy is optimal for that area
Have appropriate mechanisms in place to allow visitor levies collected to be remitted to the local authority
Have made information about the visitor levy and how to pay it available and in the public domain, for both business and visitors
The approach to collaborative decision making on revenue spending is set out in the public domain
Establish an approach to monitoring and publicly reporting revenues raised and their expenditure on an annual basis
The approach to monitoring and reporting on the impact of the visitor levy on an annual basis, is clearly set out in the public domain
Establish an approach to evaluating and publicly reporting, the impact of the visitor levy, within a reasonable period after introduction

45. To engender public support there needs to be transparency of policy and public understanding. Local authorities should raise awareness and obtain stakeholder support. In addition, local authorities should set out a publicly available policy and guidance framework which includes legislative interpretations, compliance, dispute resolution and enforcement processes.

46. The requirements should ideally tie in with other counter-evasion measures by less visible accommodation providers and those providers who choose to fail to comply with many other aspects of running tourist accommodation, such as safety requirements.

47. All the above requirements are likely to be necessary. We consider these requirements to be appropriate and it is likely to be in the interests of the local authority to carry out these tasks before introducing a levy.

Q20: Should Scottish Government be able to prevent a local authority from applying a visitor levy?

48. No – unless specific identifiable economic circumstances exist which might lead to the application of a visitor levy being inappropriate for that catchment area. Scottish Government should retain ultimate authority in funding matters.

Q21: Under what circumstances should Scottish Government be able to do this?

49. Not applicable – given our response to 20.

Q22: What requirements might be placed on local authorities to engage with local stakeholders to determine how revenues are spent?

50. There should be local consultation, for example, by way of local focus groups or consultations; however, these should not be overly prescriptive.

Q23: How might this engagement be best achieved?

51. As above.

Q24: Should revenues from a visitor levy be allocated to priorities articulated through local tourism strategies, where they exist?

52. From an operational aspect, restricting funds to the provision of certain priorities is limiting, adds to the administrative burdens, and reduces flexibility around spending decisions. Local authorities should ideally retain autonomy for how the funding is allocated and spent. Hard-pressed hoteliers may have a different opinion – however, from a policy perspective, unless the spend is ongoing and infinite, it is difficult to justify hypothecation for a finite project – i.e. once the finite project has been delivered, why is the levy still being collected?

Q25: What reporting arrangements might be required of local authorities to account for the expenditure of receipts from a visitor levy?

53. This should be based on a national framework to make the data readily available to scrutineers and the public.

Q26: If a local authority was to impose a visitor levy on a specific area within the authority, should any revenue raised have to be spent only in that area?

54. See our response to Q.24.

Q27: Is the name ‘visitor levy’ appropriate for the new powers proposed in the consultation document?

55. This seems to say what it is. The term “transient” is capable of being misinterpreted/is not widely understood.

Q28: If not, what do you consider to be a better alternative and why?

56. No comment.

In relation to Q29, under existing law accommodation providers already must clearly display the price of their accommodation and any VAT which applies to their prices.

Q29: What requirements should apply to ensure accommodation prices transparently display a visitor levy?

57. The visitor levy should be shown separately and visibly alongside their prices and any applicable VAT. Booking sites will need to change their booking information to show and calculate the TVL charge or make it clear that the charge will be made locally by the accommodation provider (e.g. Booking.com usually states this is charged separately on arrival at the accommodation in Italy). Legislative provisions should set out whether the charge applies regardless of cancellation/no show or not.

Q30: What, if any, transition arrangements should apply when accommodation is reserved and paid for in advance of a local authority choosing to impose, or subsequently vary, a visitor levy for the period the accommodation is let?

58. If there is to be a one-year lead-in to this tax being introduced this should provide ample time for preparation and mean that there is less of a need for transitional arrangements.

59. Specific bookings for named individuals that have been made before the announcement date should not be charged the tourist levy. General block bookings, that do not name each individual visitor, should not be included in a transitional arrangement.

Q31. Should these transition arrangements be set out in a national framework or be decided by local authorities?

60. Any transitional arrangements should be part of the national framework to avoid varying procedures and any subsequent confusion.

In relation to Q32 - Our partial BRIA indicates that the main groups that will be affected by a visitor levy are:

- *Visitors (both domestic and international)*
- *Tourism accommodation providers and their employees*
- *Other tourism businesses and wider economy*
- *Local residents and general public*
- *Local Authorities*

Q32: In addition to what is set out in our draft BRIA are you aware of any additional impacts the visitor levy will have for any of these groups?

61. No comment.

Q33: Are there any other groups not listed here that should be given attention in the impact assessments?

62. No comment.