



THE PRINCIPLES OF A LOCAL DISCRETIONARY TRANSIENT VISITOR LEVY OR TOURIST TAX

Issued 2 December 2019

ICAEW welcomes the opportunity to respond to the [Principles of a local discretionary transient visitor levy or tourist tax](#) consultation published by the Scottish Government on 9 September 2019.

Summary

The consultation suggests a discretionary power enabling local authorities in Scotland to apply a levy on visitors. This would achieve the Scottish Government's objective of maintaining and enhancing the tourism sector's economic, social and environmental contribution and devolve more power to local communities.

We recommend the same design, based on the total accommodation charge, should be used throughout all regions of Scotland to make it easier to understand both by those administering the scheme and also by those paying the levy.

A common design would still allow local autonomy for setting rates and discretion on how the funds should be spent.

The administration of the scheme should be digitalised from the outset and sufficient time must be allowed for businesses and the authorities to make the necessary systems changes.

This response of 2 December 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

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KEY POINTS

1. A discretionary power enabling local authorities to apply a levy on visitors would achieve the Scottish Government's objective of maintaining and enhancing the tourism sector's economic, social and environmental contribution and devolve more power to local communities.
2. We support the Scottish approach to taxation which is underpinned by the same key four principles developed by Adam Smith as underpin ICAEW Tax Faculty's own Ten Tenets, see Appendix 1. In line with these principles, we recommend the same design should be used throughout all regions of Scotland. This would make it easier to understand both by those administering the scheme and also by those paying the levy.
3. A common design would still allow local autonomy on setting rates and discretion on how the funds should be spent.
4. A levy based on the percentage of the total accommodation charge would best achieve the policy objective and be the simplest to administer.
5. Local authorities should be free to decide on rates that are appropriate for their particular area and market.
6. The administration of the scheme should be digitalised from the outset and sufficient time must be allowed for businesses and the authorities to make the necessary systems changes.

RESPONSES TO SPECIFIC QUESTIONS

- 7. 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.**

We consider that the design should be mostly set out at a national level.

The consultation document acknowledges that there is tension between national consistency and local autonomy. We think that setting out the design at a national level would increase transparency and ease administration.

Having a national framework would still allow local autonomy on setting rates and discretion on how the funds should be spent.

A national framework would assist businesses that operate in more than one local authority area and make it easier for visitors to understand the levy.

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

We agree that an overnight stay in commercially let accommodation is the most appropriate basis for applying a levy. There would still be some definitional issues to be resolved such as the meaning of 'commercially let' and what constitutes an overnight visitor as opposed to a tenant.

- 9. 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

We do not think that there is a practical way of applying the levy to any of these groups. We can understand why it might be desirable to do so given that they may contribute less to the local economy than the overnight visitors to which the levy will apply but it does not seem feasible. The levy might result in some behavioural changes such as visitors to Edinburgh and Glasgow choosing to stay south of the border and make day trips.

10. Q4. The consultation paper sets out four options for the basis of the charge. 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 dependant on the quality of accommodation

We think that a levy based on the percentage of the total accommodation charge would best achieve the policy objective and be the simplest to administer.

11. Q5. For each option in Q4 what are the considerations for accommodation users, accommodation providers and local authorities.

A levy which takes the quality of accommodation into account would be problematic as there is no existing grading system that applies to all accommodation within the scope of the levy.

The percentage of the total accommodation charge option would provide a proxy for quality and we think would be the simplest to administer. Consideration would need to be given to the definition of 'accommodation charge' to guard against avoidance arising from the charge to the visitors being broken down into multiple elements with some not being within the scope of the levy. This option would provide the opportunity to introduce a de minimis to exclude the smallest providers from having to operate the levy.

The flat rate per room or person options appear simple but would bring additional record keeping requirements in relation to room occupancy and perhaps a definitional issue of what is a bedroom when the accommodation provided is an entire property.

12. 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?

We think that the basis of the charge should be set out in a national framework. This would make the charge easier to understand and ease administration.

13. 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?

We think that local authorities should be free to decide on rates that are appropriate for their particular area and market.

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

This is matter of economics on which we are not in a position to comment.

15. 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?

We suggest that no national cap be set initially; a cap could be kept as an option for the future if experience proves that one is required.

16. 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?

We suggest that exemptions should be kept to an absolute minimum to avoid complexity and possible loopholes but if they are required they should be the same across Scotland.

17. 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)

We suggest exemptions should be kept to an absolute minimum. Of the suggested list, the one that requires consideration is long stay guests and the definitional issue of long term guests versus tenants. We do not see a strong case for the other possible exemptions mentioned which should keep the levy as simple as possible.

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

As indicated above, exemptions should be kept to an absolute minimum and we have not identified any additional exemptions that should apply.

19. 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?

We agree that ultimate responsibility has to lie with the provider of the accommodation but it is important that the systems and processes are designed to allow third party agents to operate the levy on their behalf.

20. 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?

Ongoing basis (e.g. each night) / Monthly / Quarterly / Annually

We suggest that accommodation providers be given as much flexibility as possible over how frequently they report and pay the levy. An annual option would minimise the compliance burden on the smallest businesses whose tax reporting obligations are generally annual. More frequent obligations might be appropriate for larger businesses to help protect revenues. The seasonality of many of the businesses concerned should be borne in mind when considering this issue.

The treatment of cancellations must be considered. We presume the levy would only be charged if the booking went ahead, even if payment for the accommodation was required in advance.

21. 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 dependant on the quality of accommodation

As indicated above we think that option (c) percentage of total accommodation charge would be the simplest to administer and the only record required would be the total value of the accommodation charge.

22. 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?

We are not sufficiently familiar with the information already held by local authorities on databases for administering business rates, council tax and local licencing to know whether these would provide a comprehensive list or whether a specific list would be needed.

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

Local authorities will need appropriate enforcement powers; these are most likely to involve a civil penalty as suggested in question 18. It would be appropriate for a light touch approach to be taken when a local authority first introduces the levy and the focus should be on raising awareness amongst those who will need to collect it and especially those who might reasonably think that they are not within the scope of the levy.

24. 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? Please state level of civil penalty (fine) (in £ pounds sterling) that you think is appropriate?

It would be appropriate for there to be a civil penalty. We suggest that the five principles outlined in [HMRC discussion documents on penalties](#) be applied. These principles are:

- The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues
- Penalties should be proportionate to the offence and may take into account past behaviour
- Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant
- Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner
- Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.

25. 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.

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 publically 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 publically reporting, the impact of the visitor levy, within a reasonable period after introduction

We think that the requirements listed are appropriate. The introduction of the levy is likely to generate strong views in support of and against it and local authorities should be encouraged to build as much consensus as possible. It is important that sufficient time is allowed to ensure that the appropriate systems and processes are in place so that administrative issues do not undermine the introduction of the charge. In particular, changes to computer software often require considerable time to implement, particularly for older systems which may be in use for bookings of accommodation.

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

We do not think that the Scottish Government should be able to prevent a local authority from applying a visitor levy.

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

We have not identified any circumstances in which this should be necessary.

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

We think that there should be a requirement to consult local stakeholders but that local authorities should be allowed as much discretion as possible over spending decisions.

29. Q23: How might this engagement be best achieved?

We think that this would generally be a matter for the local authority.

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

As mentioned above we think that local authorities should be allowed as much discretion as possible over spending decisions. For example, spending on local infrastructure or to support local businesses might not form part of a local tourism strategy but still be an appropriate use of the funds raised.

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

We suggest that the reporting arrangements become part of existing requirements such as annual reports, bearing in mind that there should be accountability to both central government and local residents.

32. 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?

We think that spending restrictions should be kept to a minimum and hypothecation to a specific area within the authority should be avoided.

33. Q27: Is the name 'visitor levy' appropriate for the new powers proposed in the consultation document?

We consider that the name is appropriate, in particular the use of 'levy' rather than 'tax'.

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

If, as anticipated, the levy would apply to overnight stays only it would be clearer to use the name 'overnight visitors levy'.

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

We think that the levy should be shown as a separate item on price lists, invoices, receipts and on websites. Consideration would need to be given to the extent to which the total price should be displayed, especially on websites, so that the levy does not appear as an additional cost later in the process.

36. 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?

We suggest that the levy should apply to all overnight stays on or after the date that the visitor levy is introduced by a local authority. An exception might be made for stays that had been booked and paid for before the local authority had passed the necessary regulations for the levy (including the rates). (We assume that local authorities would choose or be obliged to allow time between the regulations being passed and the introduction date to allow time for accommodation providers to introduce the necessary systems and processes).

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

We suggest that the transition arrangements be set out in a national framework, in the interests of consistency.

38. 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?

We have not identified any additional impacts.

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

We have not identified any other groups.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).