

Visitor Levy (Scotland) Bill - call for views

Response by the Chartered Institute of Taxation

1 Executive summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000+ members, and extensive volunteer network, in providing our response. This response also draws upon the experience within the Association of Taxation Technicians and our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party political organisation.
- 1.2 Overall, we welcome the proposed legislation; it appears to offer a clear, relatively simple regime with adequate safeguards for the rate payers. Our main concern is to ensure that the overarching rules and parameters concerning the application of the levy are applied nationwide via legislation; it is important that uniformity and consistency does not give way to complexity across the country. Likewise, guidance must be offered to all those who administer the levy (within the authorities and accommodation providers) to ensure a degree of consistency across the country with respect of reporting and enforcement.

2 About us

- 2.1 The CIOT is an UK educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group, the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’ and ‘CTA(Fellow)’, to represent the leading tax qualification throughout the UK.

3 Introduction

3.1 This call for evidence from the Scottish Parliament follows on from our response to an initial consultation document in 2019 - ‘Consultation on the Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax’ held from 9 September to 2 December 2019, and our response to that¹.

3.2 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 The questions

4.1 ***Question 1. What are your views on whether local authorities should have a power to place a levy (a type of additional charge or fee) on top of the price charged for overnight accommodation in their area?***

4.2 We are not in a position to comment on whether local authorities should have the power generally, that is a question of policy; however, we should point out the potential unintended consequences of one authority charging the levy, and a neighbouring one choosing not to do so. This may well cause some economic distortion by putting businesses in one area at a disadvantage of the other. One area’s transit infrastructure may also bear a disproportionately high cost of visitors passing through into those local authorities with cheaper accommodation. However, the provision within s.11(3) allowing two or more local authorities to group together and charge a joint levy has the potential to help mitigate this danger.

4.3 ***Question 2. Given that the Bill is likely to result in different councils introducing a visitor levy in different ways or not doing so at all, what impact do you think the Bill will have in your area and across different parts of Scotland?***

(For example, this could include any impact (positive or negative) on local authority finances, local accountability and flexibility, businesses, or on numbers of overnight visitors)

4.4 As we stated in our response to the 2019 consultation, we would prefer the principles and parameters setting out the extent of the levy to be subject to national rules, to ensure a degree of unity and uniform application and enforcement throughout Scotland. Whilst the overarching rules should be contained within legislation, it is also vital that authorities are subject to the same rules and have access to the same expertise and guidance. This is particularly true when it comes to deciding what the level of the rates should apply in their area – authorities may lack the raw data or experience to evaluate, set and justify a particular rate. Having

¹<https://www.tax.org.uk/ref601>

set bands on various types of accommodation might help with this (see more below in our answer to question 4). As mentioned above, despite the joint levy provision within s.11(3), there is a danger inherent in a discretionary levy that authorities who decide not to charge the levy might attract greater visitors thus causing a detrimental effect on neighbouring authorities. However, if all authorities are subject to the same parameters and limitations, the danger of a disproportionate and patchwork effect on authorities and a lottery for visitors should be minimised.

4.5 ***Question 3. Do you agree with the Bill's definitions of a 'chargeable transaction' and of 'overnight accommodation'? If not, what definitions do you think would be better?***

- 4.6 Yes, the chargeable transaction relevant to this levy should be the overnight stay – more specifically the right to reside overnight; this would seem a more practical and certain way of charging the levy rather than being based on actual residence or occupation.
- 4.7 The definition of overnight, however, would seem to allow some scenarios to escape the levy. The charge only applies when somebody 'takes entry' to the accommodation – what would this mean? Presumably it would mean checking in and physically entering the accommodation. If a guest were staying in a room but didn't check in until after midnight and left within the following 6 hours, under this current definition, they would not have occupied the room long enough for it to apply. Is this a deliberate 'de minimis'? Rather than references to taking entry at midnight, it might be simpler if either: the levy simply applies when a guest acquired the right to reside in the property at midnight (irrespective when they actually did so or not), or the six hours referred to in s.3(3) is changed to three (say) to capture those 'flying visits'. Also, it would be useful to clarify whether the levy still becomes payable if the number of guests changes post-booking eg if the booking were for a room for two guests but only one takes entry – would the booking still be a chargeable transaction?
- 4.8 Currently, there is no proposed exemption for business visitors, as there is (for example) with the Manchester visitor levy regime. Similarly, unlike the French tourist tax² which excludes under-18s from the per-person per-night charge, there is no proposed exemption for children. As per our response to the 2019 consultation, consideration would in any event need to be given to the practicalities of compliance and administration of any exemptions, including what evidence is required, how this can be produced and provided, how data can be collected and processed and how to deal with disputes in relation to the application or otherwise of an exemption.
- 4.9 As for the types of accommodation included with s.4(2), we would generally recommend that existing definitions of accommodation to be utilised as far as possible; having different definitions for different taxes can be a source of confusion. We notice that there is no inclusion in s.4(2) of overnight cruise ships; arguably guests arriving in Scotland from such ships will utilise the infrastructure as much as a guest staying in land-based accommodation. We recognise however the administrative barriers in doing so and note that a cruise ship levy will be considered separately by the Scottish Government as part of the new process for considering and assessing new local taxes included in the proposed fiscal framework for local government.
- 4.10 ***4. What are your views on the Bill's proposal to allow councils to set the levy as a percentage of the chargeable transaction? Are there any other arrangements that you think might be better? If so, please give examples and a short description of the reasons why.***
- 4.11 As we outlined in our 2019 response, a percentage-based levy might be problematic: firstly, it may be seen as a type of sales tax, and secondly there's the practical issue of what the percentage is based upon – whether

² [Taxe de séjour touristique : quels sont les tarifs ? | Entreprendre.Service-Public.fr](https://www.entreprendre.service-public.fr/actualites/2019/07/16/taux-de-sejour-touristique-les-tarifs)

it's just the room, breakfast, added extras incurred after check-in, payment for use of facilities/room service etc which makes up the 'accommodation portion' as mentioned in the legislation. However, a percentage-based rate is certainly a progressive and fairer means of taxing the transaction.

- 4.12 A flat rate, whilst regressive, is the simplest option both to administer and for guests to understand. In Manchester, for example, it is a simple £1 addition to the cost of a room per person per night in premises with an annual rent value of £75,000 or more. An annual rent value threshold, or something similar, would address the obvious disparity of a blanket flat rate which would apply to a campsite pitch the same as it does to a room at the Balmoral.
- 4.13 Another option for consideration, similar to that, might be for local authorities to base their flat rates upon types of accommodation, and then on some uniform easily-identifiable characteristic (annual rent value, room size, or maybe even how many stars the hotel has), resulting in minimum and maximum bands per type of accommodation. The more luxurious the accommodation, the more the rate. This is similar to how the French tourist tax is applied, with maximum rates of €0.20 for campsites, to €3.20 for 5-star hotels and a sliding scale in-between. National minimum and maximum rates are in place for individual municipalities to decide what, within those parameters, they can charge³. Not only would this help address the regressive nature of flat rates, but if a nationwide legislative framework were in place, containing these parameters alongside guidance and definitions, it would help ensure transparency and consistency throughout the country.
- 4.14 ***Question 5. What are your views on the absence of an upper limit to the percentage rate (which would be for councils to decide) and that it could be different for different purposes or different areas within the local authority area, but not for different types of accommodation?***
- 4.15 We do not usually comment on the actual setting of rates for taxes. However, we will reiterate again the benefits of rates (whether percentage or fixed), bands or upper/lower limits being applied nationwide (albeit recognising that some local discretion in terms of the level of rate might have advantages) rather than creating complexity via different rules for different regions and types of accommodation, thus risking the potential simplicity of levy being undermined.
- 4.16 ***Question 6. The Bill would allow councils to apply local exemptions and rebates to some types of guests if they choose to. It also allows the Scottish Government to set exemptions and rebates on a national basis where it considers it appropriate. What are your views on the Bill's proposals in relation to exemptions and rebates?***
- 4.17 If local authorities choose to apply the levy , then they should be subject to the same rules in respect to exemptions and rebates as every other authority to ensure a degree of uniformity and minimal degree of distortion. Ultimately, this is a national levy – whether it applies locally is a local decision, but if it does, it must be applied in a uniform and consistent manner – simply having national (presumably non-binding) guidelines or advice alone with respect to exemptions will not necessarily lead to that, the parameters and rules should be contained within the legislation.
- 4.18 ***Question 7. Do you agree with the Bill's requirements around the introduction and administration of a visitor levy scheme, including those relating to consultation, content, and publicity (Sections 11 to 15)? Are there any other requirements you think should be met before any introduction of the levy in a given area?***

³ Per footnote 2 above

- 4.19 Yes, we agree with the ‘process’ proposals, they will offer transparency and clarity to guests and ensure that authorities have carefully considered the application or otherwise of the levy. With respect to the transitional rules (s.15), national guidelines would need to make it clear to accommodation providers the importance of communicating to guests when the levy comes into force and whether pre-existing bookings that have already been paid for are subject to the levy or not.
- 4.20 ***Question 8. What are your views on the Bill’s requirements for local authorities in respect of records keeping, reporting, and reviewing? (Sections 16, 18 and 19)?***
- 4.21 It is vital that proper accounts and records are kept of the proceeds from the levy, and that the funds are being applied fairly and in accordance with the aims and intentions of the levy – these proposals appear to do just that. The requirement to publish annual reports going forward gives the opportunity, not only to give the scheme some transparency, but to review its effectiveness and inform future policy decisions. That the first report need not be completed until 18 months’ time appears a generous allowance for accommodation providers, but 12-month intervals from the date of commencement should be sufficient; an initial ‘soft landing’ with respect to the penalty regime would be a more useful concession for new entrants into the scheme.
- 4.22 ***Question 9. The Bill requires that net proceeds of the scheme should only be used to ‘achieve the scheme’s objectives’ and for ‘developing, supporting, and sustaining facilities and services which are substantially for or used by persons visiting the area of the local authority for leisure purposes.’ Do you agree with how the Bill proposes net proceeds should be used and if not, how do you think net proceeds should be used?***
- 4.23 Yes, there needs to be some clear purpose behind the levy and clarity as to what the funds are to be used for. The local authority should have discretion as to precisely how the funds are applied to their locality, but that broader criterion should remain in place and be a nationwide requirement for all participating authorities. One of Adam Smith’s Canons of Taxation was ‘certainty’ ie that taxpayers are clearly informed about why and how taxes are levied, there needs to be a clear reasoning in place why this levy is being charged. According to the policy memorandum, the tourism industry in Scotland is a strong one and one ripe for maximising the opportunities to maximise revenue; the popularity of Scotland as a tourist destination places pressures on the local infrastructure which could be eased through that additional revenue.
- 4.24 ***Question 10. What are your views on the Bill’s requirements for accommodation providers to identify the chargeable part of their overnight rates, keep records, make returns, and make payments to relevant local authorities? Are there any other arrangements that you think would be better, for example, by reducing any ‘administrative burden’ for accommodation providers?***
- 4.25 Keeping records and making returns are a reasonable requirement. The criterion to identify the chargeable part of their overnight rates should come with some guidance to assist with instances where that might not be so obvious. Quarterly returns would also seem the best option for making returns, especially if they can be tied into businesses’ VAT and/or MTD for ITSA reporting obligations. However, for some businesses (particularly larger ones) it might be useful if they have the option to file monthly for their convenience and to ensure potential data loss and errors are kept to a minimum. Local authorities should also be limited by legislation about how much detail they can request in the returns, to ensure administrative burdens on accommodation providers are kept to a minimum. It might also be useful if paper returns could be filed if requested. Whilst online returns should be encouraged and the default method of reporting, there may be businesses whose owners require the submission of paper returns on the basis of digital exclusion as with the

VAT regime (ie religious grounds, age/disability or another reason based on reasonable practicality), so that option should be available where required.

- 4.26 Another possible suggestion for minimising the burden on accommodation providers, might be for the responsibility for collecting the levy to be placed on the booking agency/platforms (Booking.com, Hotels.com etc) where bookings are made on these, rather than by the accommodation providers themselves when the guest takes entry. Section 8 allows for third parties to collect and report the levy on behalf of the liable person; whilst this will no doubt ease their burden it can only be done with local authority approval and the accommodation provider would still be ultimately responsible. The agency/platform would likely be better placed to cope with the necessary administration and with many bookings now being made in advance through apps, it might be easier to apply the charge (based upon the relevant local authorities' own rules) earlier on and remove the administration burden from accommodation providers on such bookings altogether.
- 4.27 ***Question 11. Do you have any comments on Part 5 of the Bill (Enforcement and Penalties and Appeals)? Are there any other arrangements that you think might be more appropriate in ensuring compliance and reducing the risk of avoidance?***
- 4.28 Clearly, any tax regime needs enforcement provisions and those within the proposed legislation seem proportionate and reasonable. We note that to a large extent they mirror existing UK legislation as it applies to the charging authority's information and inspection powers, penalty and interest charging powers, and penalty assessment and enforcement powers.
- 4.29 We are pleased that a 'reasonable excuse' defence is available to the accommodation provider and that the local authority has discretion to reduce, suspend or waive the penalty if there are 'special circumstances' (subject to the point we have made above about these being in accordance with national rules), and that there will be a process for review by the local authority and an appeals process to the Scottish tax tribunal (although we note that they will both be provided for in regulations not yet published see s.67 & s.68).
- 4.30 It will be essential that the reviews process, which we note must be conducted before an appeal may be brought, is independent, i.e conducted by an official not previously involved in the case concerned. and seen to be so - to ensure taxpayers can have trust in the process.
- 4.31 The CIOT has ten 'principles' against which we gauge executive powers:

1. *Consistent – powers and safeguards should be applied consistently across HMRC/authority, taxes and taxpayers.*

In this instance, these proposals appear consistent with penalty regimes for other taxes, in particular income tax self-assessment (ITSA) (although we note that the late filing and late payment penalty regimes as they apply to ITSA are due to change once Making Tax Digital for ITSA is introduced in April 2026, for example, a points-based penalty system is being introduced for late filing). The Scottish Government may wish to review the structure of the levy's late filing and late payment penalty regimes once they have had time to bed in and sufficient data has been collected to be able to assess their effectiveness, for example to assess if a points-based system could be more suitable.

It will be important that local authorities across Scotland apply penalties and other compliance powers consistently to instil and maintain trust and confidence in the regime. This might not be straightforward given that penalties etc will not be issued centrally but at local authority level. We

suggest that guidance will need to be issued centrally to all local authorities to provide them with clear instructions on how to administer their powers in as consistent a way as possible.

2. *Fair – powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers, whilst being effective in identifying and dealing with non-compliance.*

The availability of the reasonable excuse defence for each ‘failure’, the behavioural penalties under s.55, and the reviews and appeals processes, provide that balance between fairness and effectiveness.

3. *Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.*

The penalties do not appear overly harsh, although the maximum £3,000 per inaccuracy penalty (s.55) would appear a little disproportionate especially considering this would be a new regime and would likely take some getting used to. A ‘soft landing’ approach to inaccuracies would help mitigate this until payers are more accustomed to the levy and its administrative workings.

A ‘soft landing’ approach might also be considered for the late filing penalties, as has been used for a short time by HMRC when other penalty regimes have been introduced.

4. *Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.*

The policy memorandum for this legislation contains several studies and evidence of research and consideration: the 2018/19 national discussion roundtables in response to Convention of Scottish Local Authorities’ (COSLA) Transient Visitor Tax paper, along with the 2019 consultation. The Scottish Government’s approach to tax, as outlined in the 2021 Framework, has also been considered, so this principle would appear to have been met with regard to introducing the levy itself.

In terms of using the powers once they become law, it is essential that local authorities make decisions based only on the facts and evidence available to them, including information provided by the accommodation provider and any third parties.

5. *Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.*

This is a very specific tax targeted at a specific person ie transient visitors and levied against accommodation providers to provide some support to the local infrastructure and environment; this principle would therefore appear to be met.

6. *Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.*

This principle forms the basis for our call (above) for the parameters, rules and penalty and appeal safeguards concerning the levy to be contained within legislation, supplemented by nationwide guidance to assist those administering the levy. It is unfortunate that where some of the powers are being delegated to regulations, these regulations have not yet been published so we are not able to scrutinise them alongside the primary legislation.

7. *Simple - so the rules can be more easily understood by taxpayers, agents and the authorities.*

The penalty and compliance regime would appear to be consistent and fairly simple for levy-payers and their agents to understand, given the close resemblance to existing rules for other taxes.

8. *Transparent and communicated effectively – so taxpayers, agents and local authority officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC/authority decisions.*

The provisions concerning the filing of quarterly reports and the penalties within the legislation seem easy to understand; however, the provision of practical guidance accompanying this would also ensure this principle is also met. Communication of the rules and penalty provisions will need to be clearly communicated to accommodation providers, especially those smaller businesses (eg AirBnB owners) who may not be professionally represented. Whilst we would expect guidance to be provided on local authority websites, we would also suggest that a direct communications campaign, perhaps by letter, would be worth considering ahead of the introduction of the levy. Other channels for highlighting and communicating the levy might include Government departments involved in tourism, professional bodies representing accommodation providers, tax and accountancy professional bodies and digital platforms such as AirBnB, although this might require a more centralised approach to be effective.

9. *Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.* It will be important that the powers being introduced are regularly reviewed to ensure they are meeting the policy objectives and operating effectively (see also comments under point 1 above).
10. *Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge local authority decisions via statutory review, tribunal appeal etc.*

We note that there is a two-fold oversight process which provides levy-payers with access to justice. Firstly, there is an obligation on Scottish ministers in s.67 to make regulations to provide for reviews by the relevant local authorities of decisions made in connection with the operation of the scheme, enforcement action taken and penalties imposed. Secondly, there is an obligation on ministers in s.68 (to make provision via regulation on the appeals process against decisions made by the authorities in respect of the levy and the enforcement and penalty provisions) which gives levy-payers access to justice via the appeals process, and thereafter to the tax tribunals. A review must be conducted before an appeal can be brought.

- 4.32 ***Question 12. Do you have any comments on the issues that the Scottish Government proposes to deal with in regulations after the Bill has been passed? (Set out in the Delegated Powers Memorandum) Are there any that you think should be included in the Bill itself rather than being dealt with by regulations and if so, why?***

- 4.33 Essentially, we would like to see all fundamental, overarching, ‘structural’ and procedural rules contained within the Bill itself to ensure a uniform, universal and consistent parameters for local authorities to work within; these would include: definitions, exemptions/waivers, reporting and compliance procedures, enforcement and penalty rules, as well as those concerning appeals. Subordinate legislation should be reserved to those matters which require flexibility, updating and ‘tweaking’ to ensure efficient application of the rules, rather than of the rules themselves, important examples being: the setting of the rates’ levels (and potentially minimum/maximum bands), as well as setting of interest rates and ancillary provisions. This will ensure that all local authorities are aware of the rules and can apply their discretion within the same parameters.

- 4.34 Within the delegated powers memorandum, the only sections we would be happy to leave within the power of ministers/Court of Sessions are: s.64 (setting interest rates), s.66 (the Court of Session's power to issue summary warrants) and sections 73 and 74 concerning ancillary provisions and commencement of the levy respectively. Some further comments on the proposals within the memorandum: s.4 and adding to the list of qualifying accommodation - as we've pointed out, it would lead to less confusion and dangers of inconsistency if an existing definition of qualifying accommodation were adopted, any such changes to that existing definition would simply follow through; s.14, whilst we would urge some centralised guidance to accommodation providers, and a pre-introduction national awareness campaign (see above 4.31(8)) we disagree that local authorities should be told by the Bill or Ministers how to publicise the levy once in place; it would create an overly-prescriptive regime and additional administration for both levy-payers and authorities. Local authorities are subject to the publicity obligation in the Bill, but precisely how they do that should be left up to them with the aid of national guidelines.
- 4.35 We would, again, urge the government to issue guidance to aid the officials and accommodation providers who will have to charge, administer and enforce this levy.
- 4.36 One area which does not appear to be covered in the consultation documents, was the treatment of VAT within the proposed levy, as the outcomes can be very different (as experiences with the levy in England have shown). In Manchester, for example, the levy is added to the hotel bill, thus the additional VAT comes with the increased chargeable supply; whereas in Blackpool's proposed scheme, the business rates will be adjusted, so no effect on VAT at all. Our understanding is that the treatment in Manchester will also apply to this proposed levy in Scotland, whereby 20% VAT is simply added onto the levy – but we would ask for clarification/confirmation as to whether the Scottish scheme will be structured so that VAT is applied in this way.
- 4.37 ***Question 13. Do you have any comments on the accuracy of the estimated costs for the Scottish Government, local authorities, accommodation providers and others as set out in the Financial Memorandum and Business and Regulatory Impact Assessment (BRIA)?***
<https://www.gov.scot/publications/visitor-levy-bill-business-regulatory-impact-assessment/pages/1/>
- 4.38 We have no comments on these figures.

5 Acknowledgement of submission

- 5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

19 September 2023