



Law Society
of Scotland



Consultation Response

Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax

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Introduction

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We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to Scottish Government's consultation on *Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax*¹. We have the following comments to put forward for consideration.

General comments

We note that the Scottish Government's overall approach to taxation is embedded in Adam's Smith's four principles: certainty, convenience, efficiency and proportionality to the ability to pay; and based on a firm approach to tax avoidance and a commitment to stakeholder engagement. It is important therefore that any tax introduced respects these principles.

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.**

We note the stated intention in the consultation to provide powers to local authorities that "creates a local tax to fund local authority expenditure". We also note the references in the consultation to increasing local decision making and empowering communities. As the consultation recognises, there are varying tourism numbers, economies, and challenges across Scotland and therefore local discretion may be advantageous

¹ <https://www.gov.scot/publications/consultation-principles-local-discretionary-transient-visitor-levy-tourist-tax/>

in order for the levy to be tailored to local circumstances as required and to achieve involvement in local decision making, for example in relation to the spending of the receipts from the levy.

However, the consultation also notes the desire for the power to be consistent with the Scottish Government's overall approach to taxation. It may be challenging to achieve this consistency if much of the detail of the levy is set locally. In addition, for those businesses operating across more than one local authority area, there is likely to be merit in consistent mechanisms for reporting and collecting the levy as this will help to minimise the burden of compliance. This may include the information which requires to be reported, the format, and deadlines for reporting and payment.

Taking these factors into account, it would seem most suitable for the design and administration of a levy to be mostly at a national level with some local discretion. We suggest that careful consideration is required as to the aspects of the levy where there would be flexibility for local authorities and how this would work in practice.

Q2: Is an overnight stay in commercially let accommodation an appropriate basis for applying a levy on visitors? Please provide a reason (or reasons) for your answer.

Yes, we consider that this is an appropriate basis for applying a levy.

It will, however, be crucial to have a clear definition of "commercially let accommodation". In particular, we envisage that there may be some types of accommodation where there is a potential for a lack of clarity. For example, short-term lets or second homes that are not advertised on a commercial platform but either a property is shared or a second home is used by friends or family, and some payment is made for the use of the accommodation. Consideration may be given to HMRC's guidance on furnished holiday lets. In addition, clear definitions of "overnight stay" and "visitor" are likely to be required to ensure clarity. It will be important to take note of definitions which apply in other taxes and for other purposes, for example, non-domestic rates and LBTT, so that taxpayers can be alerted to any differences.

We anticipate that local authorities would require to identify the addresses from which they would expect to receive levy returns and payments in order to facilitate compliance and enforcement. It may be necessary for local authorities to use a variety of different data sources to identify relevant properties.

In the context of short-term lets, we note that Scottish Government consulted earlier this year on possible regulation². At this stage given the lack of regulation of the sector, it is likely to be difficult for a local authority to identify all "commercially let" short-term accommodation within their area. In addition, consideration will require to be given as to how compliance with a levy will be achieved for accommodation of this nature as against other types of "commercially let accommodation" such as hotels.

² <https://www.gov.scot/publications/short-term-lets-consultation-regulatory-framework-scotland/>

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 consider it is likely to be impractical to apply and enforce a visitor levy to day visitors and to wild or rough camping. It is not clear how such trips could be captured in terms of returns or payment of the levy. It may also be difficult to distinguish between those visiting an area for example for work or study and those visiting as tourists. It is possible that the costs of administering a levy to these groups would exceed the revenues raised.

In relation to disembarking cruise ship passengers, we anticipate that it would be feasible to apply and enforce a levy, particularly for those passengers who are disembarking and joining an organised trip or tour as payment is likely to be being made to join an excursion. In addition, there will be a single point of arrival which will help to facilitate recording and payment.

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. Please provide a reason (or reasons) for your answer.

- **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 note that a flat rate per person or per room approach could place a higher burden on individuals with lower means and so in and of itself, may not fit with Scottish Government's approach to taxation. A flat rate per person would also place a higher burden on certain groups, for example families with children. A flat rate per adult could perhaps be an alternative. A flat rate per person or per adult would have the benefit of simplicity and ease of administration.

If a flat rate per room approach is taken, a per bedroom approach may be more feasible than a per key approach.

The percentage of total accommodation charge option would appear to be most in line with the key principles of certainty, convenience, efficiency and proportionality. It allows the levy to reflect geographical and seasonal differences in price. The levy would be proportionate with the customer spend. However, as noted in the consultation paper, the percentage approach could potentially place a higher burden on single travellers as single person rooms are less common (although the flat rate per room option has a similar

downside in this regard). Such an approach would, to some extent, reflect the quality of accommodation given that a higher price is likely to be paid for higher quality accommodation. We would also anticipate that it may be easier for an accommodation provider to record and collect payment if the levy is imposed in this manner.

However, a percentage of accommodation charge could introduce complexity and administrative cost in the event that it would apply only to the accommodation costs and not to food, drink, or other costs. It is unlikely that existing accounting systems would be able to deal with this change. In addition, consideration of transparency might mean that accommodation providers would have to quote two rates, one excluding the tax and another including the tax. By contrast, where a per person charge is applied, it is generally accepted that there is no need to include this in the published price.

Having different rates based on quality of accommodation is likely to be difficult to implement, particularly given the lack of consistent and fixed standards for accommodation. There are currently a variety of different grading systems. Price is generally a good enough proxy for quality. It is unclear whether this would be applied per room or per person. We do not consider that this would be a feasible option.

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

Flat rate per person per night

We anticipate that this may impact upon accommodation users' choice of accommodation where they have a fixed budget. Accommodation providers will require to obtain information about how many people are staying in the accommodation each night. Although in most cases this information would be routinely requested, this could be challenging particularly in the context of self-catering accommodation, and perhaps creates a tension between an accommodation provider being reliant on information from accommodation users yet bearing the burden of compliance themselves. Accommodation providers should not be subject to any sanction if information provided by tourists turns out not to be correct. Local authorities would require to have suitable mechanisms in place to obtain data and payment from accommodation providers, and verify the information received.

Flat rate per room

For accommodation users, we expect that this would be broadly clear. However, we note that there would require to be clarity as to the rooms which would be subject to the levy. For example, where there is a sofa which can be converted into a bed, there may be a desire for the room containing the sofa to be levied. Consideration is also required as to whether the levy would apply per room regardless of whether it was being occupied or not. For accommodation providers, they would require to have mechanisms to obtain the relevant data and payment, although the process of verifying the information is likely to be simpler.

A percentage of total accommodation charge

We consider that this will be fairly clear for accommodation users. Accommodation providers will need to be clear about the extent of the basis for charging, for example, does the 'total accommodation charge'

include meals and other services? Consideration will also require to be given as to how VAT applies to the levy. Once these matters are established however, it is likely to be easy for accommodation providers to evidence their income although there could be costs for accommodation suppliers in changing their systems to allow for the tax to be calculated. As above, local authorities will require to have mechanisms to obtain data and payment and to verify the information.

Flat rate per night dependant on the quality of accommodation

As referred to in our answer to question 4, we anticipate that a charge on this basis is likely to be difficult to implement due to the lack of consistent quality standards. We note that such an approach may impact upon accommodation user's choice of accommodation. For accommodation providers, there may be a flat rate for them to levy, however, consideration would require to be given as to the approach to be taken to varying standards of accommodation in the one location by the same provider, for example different types and standards of accommodation within an accommodation or leisure complex.

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?

As we note in our answer to question 1, we consider there would be merit in the framework of the levy being set at national level. We suggest that this should include the basis of the charge. This would help to achieve consistency and transparency.

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 consider that the rate of the levy could be set by local authorities which would allow the charge to be tailored to local needs and demands. If the basis of the charge is fixed at national level, we would not expect that varying rates across local authority areas would create uncertainty or undue burdens on accommodation users or providers. We do note, however, that local authorities may require certain data to assist them in setting the appropriate rate.

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

As raised in the consultation paper, the interaction between VAT and the levy should be considered. If visitors pay the levy and then also have to pay VAT on the levy, this is a factor to be taken into account when setting levy rates. It will be essential to take into account the costs for accommodation providers and local authorities of the introduction and operation of the levy. There may be wider economic factors which require to be considered, upon which we make no further comment.

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 do not express any substantive view on this matter. Guidance could be provided to local authorities as to how to determine an appropriate levy for their area.

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 consideration is required as to the appropriate and desired approach – either the levy will be imposed on all overnight stays in commercially let accommodation with certain exemptions or the levy will be framed as applying specifically to certain types of visitor and types of accommodation. The creation of exemptions could result in complexity and avoidance behaviours and in the event that there are ‘loopholes’ in the provisions, steps may be required to amend the legislation.

In the event that the former approach is taken, we consider that there would be merit in there being a list of exemptions set at national level. This would help to ensure consistency and clarity for both accommodation users and providers and make it easier, particularly for accommodation providers who are operating across more than one local authority area.

In respect of those temporarily in refuges or housed in short-term accommodation by local authorities, the levy should not apply by virtue of the individual not being a ‘visitor’ to the area. However, if that were not to be the case, we note that accommodation may be being paid for by the local authority itself (in which case it would potentially be paying itself) or by an insurer.

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 consider it appropriate that exemptions apply to those listed above, with the exception of business travellers. We note that it is important that those who are subject to exemption are able to be easily identified. This should be on an objective basis using information on existing registers. Consideration requires to be given as to the need for evidence to be produced and the practical arrangements for this, including potentially the collection and processing of data. In addition, consideration is required as to how any disputes which arise will be dealt with.

Q12: Are there any other exemptions that you think should apply? Please list together with reasons below.

We note that it may be appropriate for those who are under witness protection or utilising safe rooms to be exempt although we appreciate that there may be certain practical arrangements which would require consideration.

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 consider that it is most appropriate in terms of the overall operation of the scheme that accommodation providers should generally be responsible for the collection and remittance of the tax to the appropriate local authority. Where the tax should have been collected by booking agents but was not, this should relieve accommodation providers of the obligation to report and pay the levy. Arrangements where booking agents are collecting the levy may be affected by the bargaining power of accommodation providers, particularly with major platforms, and there may therefore be commercial impacts on providers. It may therefore be simpler for the levy to be collected by accommodation providers.

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?

We suggest that monthly or quarterly returns may be most appropriate. This would ensure a balance between the burden on accommodation providers of remitting the levy and the receipt of the income for local authorities. We note that arrangements for returns and payment could be aligned with the non-domestic rates regime.

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

Information that is collected, processed and retained must be done so in line with the Data Protection Act 2018. There should not be unnecessary burdens placed on accommodation providers or local authorities as to the information to be collected. It at all possible, accommodation providers should not be required to obtain any additional information from visitors purely for the purposes of administering the levy.

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 note that existing lists including both the non-domestic rate and council tax valuation rolls may assist initially but are unlikely to provide a fully comprehensive list.

If accommodation providers are to be required to self-declare that they fall within the scheme, there requires to be a robust awareness-raising campaign. Local authorities may require information gathering and investigation powers to cover any providers who have not self-declared.

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

The imposition of a levy and any change of rate should be widely publicised in advance (both nationally and within the local authority area) to ensure providers are aware of their obligations under the law and accommodation users are aware of the charge. It is particularly important that the requirements are well publicised to accommodation providers if they are to bear the burden of compliance, especially if penalties are to be imposed on providers for failure to comply. The possible penalties themselves should be well publicised and should be proportionate to the amounts involved.

As referred to above, in the event that accommodation providers are to make a self-declaration to the local authority if they fall within the scope of the provisions, the process for this should be clear and easy to undertake.

While it may be appropriate for local authorities to have the powers to impose penalties, we suggest a light-touch approach should be taken initially following introduction of the levy. In the interests of fairness, it will be important for local authorities who introduce a levy to be able to detect non-compliance and enforce penalties consistency.

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) that you think is appropriate?

We have no particular suggestion in relation to the level of the penalty other than to note that it should be reasonable in the circumstances and reflect the desire to ensure compliance, rather than being used as a mechanism to raise revenue. It is appropriate that the penalty is proportionate to the amounts of levy involved. There should be no penalties where there is no levy due.

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

Please add any other comments on the requirements listed above. Please list any other requirements you think might be necessary, together with reasons below.

We consider all 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.

It is important that consultation with relevant parties is undertaken before a levy is introduced locally. We note that there is no reference in these requirements to compliance. The local authority should require to identify how they will ensure compliance and communicate this to accommodation providers.

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

No comment.

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

No comment.

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

We consider it appropriate that local authorities be required to consult in relation to how revenues are to be spent. Consideration may require to be given as to any restrictions on spending. We suggest that this should not be overly prescriptive given that revenues may be variable in different local authority areas or in any particular year.

Q23: How might this engagement be best achieved?

No comment.

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

No comment.

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

We consider it would be appropriate for a local authority to be required to report annually on spending. This will help to ensure accountability. This information should be publicly available. This could be included within the local authority's annual report to avoid duplication.

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 note that revenues raised in any particular area may outweigh any necessary spending in that area. As such, we do not consider it appropriate that such a spending restriction be put in place.

Q27: Is the name 'visitor levy' appropriate for the new powers proposed in the consultation document? Please provide a reason (or reasons) for your answer.

We note the importance of the name reflecting the nature of the charge which is imposed. 'Visitor levy' could suggest that the levy applies to anyone travelling out with their hometown but not staying overnight which could be misleading.

Q28: If not, what do you consider to be a better alternative and why? Please provide a reason (or reasons) for your answer.

The appropriate name depends on the target of the levy. 'Tourist tax' is likely to be well understood.

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

We have no substantive comment other than to note that the levy should be transparently displayed.

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?

Ideally, the imposition of a levy or change of rate would be made known in advance so that providers can apply the levy to bookings for dates after the levy is imposed. This could perhaps be informed by trends on how far in advance most bookings are made. A date could be set from which the levy is to be imposed on future bookings that fall after the date when the levy comes into force. However, this could be impractical as some visitors will have booked far in advance of their stay.

It may therefore be appropriate to have a two-part test – (i) for the levy to apply to a date of stay on or after the date of introduction of the levy, and (ii) for the accommodation to have been booked and paid for on or after a transitional date. The appropriate time period for these arrangements should be carefully considered. Visitors may have made decisions about their accommodation based on the total cost quoted at the time of booking. A period of one-year between the transitional date and the date of introduction of the levy may be appropriate. If payments have been made (full payment or deposit) before the levy is in force, VAT will have been calculated and paid based on the cost at the time of payment.

This two-stage approach is a similar model to the way in which Land and Buildings Transaction Tax (LBTT) was introduced and changes to the rates made. As bookings may have been fully paid in advance, a deposit may have been paid or a reservation with no deposit may have been made, consideration will be required as to the approach to be taken in each case. We also note that tour operators or event organisers may block-book accommodation some time in advance without providing details of the individual visitor until nearer the time of the stay.

Simplicity for visitors is important. The common experience for tourists of these kinds of levies in other countries is likely to be the payment of a small amount per day to a hotel or guest house.

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

We suggest that transition arrangements are set out in a national framework to ensure consistency across local authority areas and certainty for accommodation users and providers.

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? Please specify group and additional impact.

No comment.

Q33: Are there any other groups not listed here that should be given attention in the impact assessments? Please list and state how they will be affected.

No comment.

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