



Chartered
Institute of
Taxation

30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: post@ciot.org.uk

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

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The CIOT welcomes the opportunity to respond to the Scottish Government's consultation on the principles of a transient visitor levy, and the fact that the Scottish Government is seeking to develop its understanding of the issues and concerns surrounding the introduction of such a levy. The CIOT was also grateful for the opportunity to discuss the consultation document with Scottish Government officials on 31 October 2019.
- 1.2 The Scottish Government has committed itself to a tax system that has regard to Adam Smith's four principles: certainty; the burden proportionate to the ability to pay; convenience; efficiency of collection. We agree with these principles; in addition we would suggest that tax transparency and the economic impact on those resident in Scotland should be considered. Although a transient visitor levy would be a local tax, we agree with the Scottish Government that these principles should apply to any elements of a transient visitor levy set at a national level and in addition, to how local authorities use the powers given to them; moreover, consideration should be given as to how this local levy fits into the Scottish tax system as a whole in relation to these principles, as it is important to take an holistic view.
- 1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.4 Our stated objectives for the tax system, which mesh with and build on the Adam Smith principles, include:
 - A legislative process which 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.

1.5 We think these objectives should be kept in mind when considering the principles of a local discretionary transient visitor levy.

2 Executive summary

2.1 We do not generally offer an opinion on strategic and policy objectives themselves. Nevertheless, we support the purpose of the consultation as to the aim of ensuring that the legislation minimises the administrative and compliance burdens for those affected. In addition, we agree, as noted above, with the third key element in the policy context, that the local tax power should be consistent with the Scottish Government's overall approach to taxation. As noted, a transient visitor levy has the potential to affect a wide range of stakeholders, some positively and others negatively. In the interests of transparency, we suggest that it would be appropriate to identify who gains and who loses from the proposals.

2.2 In designing the visitor levy it is essential to think carefully about the types of accommodation that should and can, from a practical perspective, be included within the scope of the levy as well as the nature of visits and/or visitors that should and can be practically included. This will help to ensure a level playing field for accommodation providers. We are therefore pleased to note that the consultation covers these considerations. It is also essential that local authorities are able to implement and operate the visitor levy effectively, including being able to identify accommodation providers and apply compliance processes appropriately and consistently.

2.3 It will also be necessary for local authorities to raise awareness about the visitor levy and obtain stakeholder support. Options to help achieve this include open consultation and engagement prior to the implementation of a visitor levy, public reporting on the levy and engagement with stakeholders about how best to spend the funds raised by the levy. It should be noted that a visitor levy raises strong opinions both for and against, and so the challenge of obtaining support for a levy should not be underestimated. This spectrum of views was observed during the roundtable discussions organised by the Scottish Government and also showed through in the results of a question asked as part of a poll commissioned by the CIOT in late 2019.¹

2.4 We think that a national framework would be the best approach, to ensure consistency. This will make a visitor levy easier to operate for accommodation providers and easier to understand for visitors and others affected. Local flexibility in relation to rate-setting and spending of funds raised will help the levy respond to local circumstances and enhance local accountability.

2.5 It is necessary to consider carefully the administration and collection of the visitor levy, as well as compliance and enforcement. In particular, costs in relation to ensuring systems are able to deal with the visitor levy should be borne in mind, as well as capacity and resource within local authorities to ensure they are equipped to administer and enforce the visitor levy effectively and consistently. There needs to be clarity as to whether councils that wish to implement a visitor levy will require extra funding in order to do so effectively; if funding is required, there needs to be clarity about where this will come from. We would call on the government, and COSLA, to consider this as part of their Budget negotiations going forward. This is

¹ The results of the poll can be accessed on the CIOT website. The relevant question was question 6 of 6:
<https://www.tax.org.uk/media-centre/press-releases/press-release-poll-scots-still-failing-understand-devolved-taxes-support>

particularly important given that there is generally a lot of pressure on council budgets at present.

3 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.

- 3.1 In drawing up this consultation, the Scottish Government note that there is tension between national consistency and local autonomy. We agree. Bearing in mind the desire for a visitor levy to be consistent with the Scottish Government's overall approach to taxation, including the key principles developed by Adam Smith (which, it should be noted, can also conflict with one another), we think that the design of a visitor levy should be mostly set out at a national level. This approach would better accord with the principles of certainty, convenience and efficiency in particular.
- 3.2 As noted in the consultation, the aim is for the receipts from a visitor levy to be used to fund local authority expenditure; they will not be pooled; the National Discussion suggested the funds should be spent on activities related to tourism. In view of the policy aim to strengthen local democracy through increased local decision-making and more empowered communities, it would seem appropriate for there to be local autonomy in respect of decisions relating to the spending of receipts from a visitor levy. This would mean there was local flexibility allowing local authorities to respond to local circumstances and focus on local priorities in terms of spending. As we note later, there needs to be transparency in terms of telling communities how much is raised and how it is spent.
- 3.3 If there is a desire to minimise compliance burdens for businesses and administration costs for local authorities, a consistent framework for reporting mechanisms and requirements in relation to information and payments etc. is more likely to achieve this. For example, for a business that operates in more than one local authority area, it would be complex, burdensome and costly if, in order to comply with the requirements of a visitor levy, they had to use different software / report different information / meet a variety of reporting and payment deadlines due to local authorities having flexibility to implement very different visitor levies. A consistent framework at a national level would mean greater simplicity for businesses faced with operating visitor levies in more than one local authority.
- 3.4 In terms of Scotland's reputation with visitors and transparency, it would be easier to explain a levy that, in local authorities where it applies, operates in a consistent manner.
- 3.5 If there is to be more local flexibility in terms of the design of the visitor levy, then considerable thought needs to be given as to which aspects should allow for flexibility and why. Moreover, if an aspect is to be flexible, there is a further question as to whether this should be complete flexibility or whether that flexibility should be constrained by setting out options to choose between.
- 3.6 The most obvious flexibility would be in terms of the actual rate per night – something that would be relatively easy to explain and administer. We would also suggest that it should be permissible for a number of local authorities to band together and agree to operate the levy on a common basis in their area – for example a 'Highlands Rate'.

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

- 4.1 We agree that it would be appropriate to apply a levy on visitors on the basis of overnight stays in commercially let accommodation, as this appears to be the most feasible and practical approach.
- 4.2 As the consultation notes, there are nevertheless practical difficulties with capturing all accommodation and overnight stays to which such a visitor levy should apply. Local authorities will need to have lists of addresses from which they expect to receive returns and payments, and while it will be easy to identify some types of accommodation, others will require resources to enable local authorities to identify them.
- 4.3 It will be necessary to define the scope of the levy, that is, to define what an overnight stay is, and what is commercially let accommodation. It may also be necessary to define what a visitor is. Such definitions need to be objective, in order for them to be simple for all to operate and understand – accommodation users / accommodation providers / local authorities. For example, an overnight stay could be defined as a booking that crosses over midnight.
- 4.4 One grey area might be second / holiday homes. These may not be advertised commercially, but owners may nevertheless receive some financial compensation from family or friends that use the accommodation. It may be necessary to take a view as to whether this type of let would fall within the remit of the charge.
- 4.5 It may be necessary to give special consideration to how non-traditional models should be treated under the levy. In particular, how are Airbnb lettings to be treated? Who would be liable to charge, collect and pay over the levy on such bookings?

5 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

- 5.1 We doubt that it would be feasible to apply and enforce a visitor levy to day visitors not staying overnight or to wild or rough camping. Enforcement costs would no doubt outweigh any receipts that could be generated; moreover, particularly in terms of day visitors, questions would presumably arise as to whether it is appropriate to apply such a charge to people commuting from one local authority to another for work or school. If there was a wish to discourage wild or rough camping, penalties for camping in unauthorised areas might be more appropriate, although there would still be difficulties in terms of collection. In relation to day visitors, it would be more practical for individual sites and attractions to charge entry fees than to apply a tourist levy.
- 5.2 It would probably be possible to apply and enforce a visitor levy in respect of cruise ship passengers. Cruise ships would record people who leave the ship on an organised excursion – these often have a fee, so payment of a levy could occur at the same time the excursion is paid for. However, this would be less feasible in the case of cruise ship passengers who disembark for the day, but do not join an organised excursion, or in the case of cruise ships that block book tickets for particular attractions. Although they will be registered as they leave and enter the ship, there is no point at which a payment is made – it would probably require institution of new procedures at the point of disembarkation, including a means of the cruise company taking payment.

- 5.3 An alternative in respect of cruise ship visitors would be to levy a *per capita* charge on the ship, which would apply whether or not the passenger disembarked.
- 6 Q4. The consultation paper sets out four options for the basis of the charge (section 5.1). Please select 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**
- 6.1 We note the impossibility of basing a visitor levy on the quality of accommodation, due to the lack of a national standard. This effectively narrows the question to the consideration of the first three options. There is a tension between choosing a basis that means the levy will be simpler to administer and one that will better reflect ability to pay, and there are difficulties with each of the options. Although all the principles are important, in the case of a tourist levy, we think it is essential that the levy is simple to understand and administer, in order that it can be effective.
- 6.2 We think that a flat rate per room per night charge might be the best approach to use in terms of meeting the different principles. It might prove to be the most efficient and convenient basis, taking the Adam Smith principles into consideration. The concept should be simple for most accommodation users to understand. The only exception is 'ability to pay'. Generally we think that those who bear the cost would be able to pay it. But this principle is often taken to imply progressivity. A flat rate charge is not very progressive. But these principles should sensibly apply to the tax system as a whole: since they can conflict, not every principle can be carried through totally to every tax. We suggest that the tax, much of which will be borne by people outside Scotland, and which will likely be a small charge applied to entirely discretionary expenditure, will not materially adversely affect income distribution in Scotland.
- 6.3 Care would be needed to ensure that the charge was visible.
- 6.4 A percentage of total accommodation charge would need to be considered in light of EU rules, as it may be viewed to be a turnover or sales tax, which would be prohibited. If legal, there would be issues to consider such as what parts of the cost the levy applied to: total bill; accommodation only; meals and other services?
- 6.5 A flat rate per person approach would place a higher burden on families with children, although one option would be to charge only on adults – this would require identification of visitors by age as well as number.
- 6.6 A flat rate per room approach would work better if it were to use a per bedroom rather than a per key basis. Although issues might arise in relation to accommodation in dormitories or large rooms with screens, allowing these arrangements, which are likely to be taken up by less well-off people, to be taxed very lightly (as the dormitory or large room would count still as one 'room' for the purposes of the tax) could be a way of bringing this basis of taxation into greater conformity with the 'ability to pay' principle.
- 7 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 / Flat rate per room per night / A percentage of total accommodation charge / Flat rate per night dependant on the quality of accommodation**
- 7.1 As a general point, in cases where VAT applies, it is likely that the tourist levy will form part of the base for

calculating VAT – that is, it will be subject to VAT itself. It will be important that this point is covered in guidance for accommodation providers.

- 7.2 Flat rate per person per night – for accommodation users, this would probably be easy to understand, although provision of evidence for children’s ages might be problematic in some cases, if there was some sort of exemption for children. Accommodation providers will have to ensure that they have mechanisms for recording and obtaining evidence to prove (for compliance purposes) how many people have stayed in the accommodation each night. Although this raises clear practical issues with self-catering accommodation, where the provider may be entirely reliant on self-declaration by the user(s), there are also likely to be issues with hotels, particularly where rooms are booked on a price per room basis, rather than number of guests. Moreover, if there was an exemption for children up to a certain age, evidence of children’s ages would be required. Local authorities would have to ensure they have the ability to receive and process data provided by accommodation providers, match this with revenues and means of verifying the data provided.
- 7.3 Flat rate per room – for accommodation users this would probably be easy to understand, although in terms of self-catering accommodation that includes sofas that can convert into beds, determination of the number of bedrooms may complicate matters. There would be fewer record-keeping requirements for accommodation providers and local authorities would probably find this easier to check. As regards ‘bed-settees’ there would need to be a simple rule to follow as to whether this counts as a room or not – given this option would not require a record of the number of guests, there would be no means of easily checking whether a room containing a bed-settee was being used as a bedroom. Another issue in relation to accommodation with more than one bedroom, is whether the charge would apply to all bedrooms, regardless of whether or not they are occupied.
- 7.4 A percentage of total accommodation charge – for accommodation users, provided there is transparency about the levy and how the percentage is calculated, we think this should be fairly simple to understand. Accommodation providers will need to be clear to what part of their price the percentage has to be applied (accommodation only / meals / other services etc.), and, if they are a VAT-registered business, how VAT applies to the levy. Local authorities will need to understand these same points in relation to accommodation providers in their areas.
- 7.5 Flat rate per night dependent on the quality of accommodation – given this option is not on the table currently, given the lack of a mandatory system for assessing the quality of accommodation in Scotland, we do not comment on this option.

8 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? Set out in a national framework / Decided by local authorities / Don’t know

- 8.1 As noted above, for consistency, transparency and ease of operation, we think it would be best if the framework of the levy was set at a national level. We think that this should include the basis of the charge. As a wider point, it is important that any tax commands the respect and trust of taxpayers in order to get their support. Those affected by a tax are less likely to trust it if it varies substantially. A consistent national model is more likely to be accepted, and additionally, will be easier for politicians to explain.

9 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? Set out at national level / Decided by local authorities / Don't know

9.1 We think that the rate / level of the charge should be decided by local authorities. This would have the aim of reflecting local circumstances and needs.

9.2 We have a concern though that local authorities may not have access to the data or the expertise available to them to ensure that there is a sound basis for their decisions in relation to the rate or level of the charge. It might be sensible for local authorities to band together and have the same rate; or, there could be a national default rate that local authorities could choose to vary.

9.3 In the context of a consistent national framework, which we think would be the most sensible approach, we think that having different rates applying in different local authorities should cause relatively few practical difficulties for accommodation providers.

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

10.1 Issues may arise around price elasticity – this is really a matter for economists and an area on which we cannot offer much comment.

10.2 It will be necessary to consider carefully the interaction between the levy and VAT, and the effect on the setting of the rate of the levy.

11 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? Set out at national level / Decided by local authorities / Don't know

11.1 If there were a national framework, and the only element of the levy to be determined locally was the rate, we think that it would be sensible for there to be some sort of national-level direction. This could take the form of a cap or upper limit.

11.2 Rather than setting a cap, another option might be to offer national-level support or guidance to assist local authorities in best determining the rate to apply. Another option would be to set a default rate for the levy at a national level, which would apply if a local authority implemented a levy, unless they specifically choose to vary it.

12 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? All exemptions should be the same across Scotland and local authorities should not have any discretion / Some exemptions should be set at national level, and some should be at the local authority's discretion

12.1 This question is based on the premise that the visitor levy will, in basic terms, apply to all overnight stays in commercially let accommodation and that there will be a number of exemptions to remove certain types of visitor or types of accommodation from the scope of the charge. We would raise a question at the outset as to whether this is the most sensible approach. An alternative approach would be to target the charge from the outset, so that it only applies to certain types of visitor or accommodation. This is because, inevitably, by adopting a broad charge and applying specific exemptions, you open the door to loopholes, manipulation

and avoidance behaviours. As a result, the use of a list of exemptions means that the levy becomes more complex, especially if amendments are required to the exemptions to deal with loopholes.

- 12.2 If the decision is taken to apply the charge on a blanket basis, and then remove some visitors / types of accommodation from the scope of the charge through the application of exemptions, we think it would be best for there to be consistency across Scotland – ie these should be set out in a national framework. Again, this is for consistency, ease of operation by businesses, ease of understanding for visitors and efficiency in terms of administration.
- 12.3 In relation to the rehousing of individuals, for various reasons as set out in the consultation document, we wonder whether the decision as to an exemption would also depend on who was paying the bill for the accommodation – local authority / insurance company etc. For example, if it is an insurance company, would it be appropriate for there to be an exemption? If it is the local authority itself, does it matter whether or not there is an exemption, since the local authority is effectively paying the charge to itself? However, if the key issue is a matter of whether the individual is a ‘visitor’ to the local authority, then arguably there is a valid reason to not apply the charge in such cases.
- 13 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 (eg people staying for more than 14 days) / Business travellers / Local resident (paying for overnight accommodation within the local authority in which they reside permanently)**
- 13.1 We think the list of exemptions should be kept brief. There should also be care taken to ensure that individuals falling within exemptions can be easily and objectively identified and evidenced. Otherwise, exemptions will create burdens for visitors, businesses and local authorities in terms of compliance and administration.
- 13.2 In terms of exemptions, consideration needs to be given to the practicalities of compliance and administration, 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.
- 13.3 It should also be noted that the type of exemption that is appropriate may depend on the basis of the charge. Exemptions that apply to a ‘type’ of person may work better under a ‘per person’ levy rather than a ‘per room’ levy.
- 13.4 We note that most of the individuals listed in question 11 fall within the definition of visitors and it is not entirely clear why there should be special exemptions for any of these groups. In order to verify individuals falling within these categories, accommodation providers would have to gather data they will not currently collect. Moreover, several of the categories are open to manipulation, and therefore it would not be possible for the accommodation provider to be absolutely certain that they are fully compliant.
- 13.5 It may be appropriate however to have an exemption for children under a set age, particularly if it is decided that the levy will operate on a per person basis.

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

14.1 As noted above, we think any list of exemptions should be brief. We do not have any other suggestions for exemptions from the levy.

15 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?

15.1 We agree that this seems the most appropriate approach, and that it would not be viable for the visitor to be the liable party. Nevertheless, we note a concern that, in relation to third party platforms, many accommodation providers will have little bargaining power. Thus, while they may wish, in light of this proposal, to insert indemnity clauses in contracts with third party platforms (in the scenario that the platform collects but does not remit levies), they may not be in a position to include this in such a contract. They may then have to consider whether to continue using the third party platform as a means of securing bookings. So, this approach may have commercial ramifications for some accommodation providers.

16 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 (eg each night) / Monthly / Quarterly / Annually

16.1 We would suggest that quarterly returns might provide a sensible balance, for both businesses and local authorities. This would fit in with other reporting obligations that operate on a quarterly basis, such as VAT, and might make reporting less of a burden where there are significant numbers of stays to report. For larger businesses, a monthly option might be preferable.

16.2 Although accommodation providers will produce annual accounts, an annual basis would run the risk of accommodation providers losing records or the money collected.²

17 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

17.1 When considering the information that should be collected and retained, we note that the requirements of the General Data Protection Regulation (GDPR) must be met. In addition, requirements should not place unnecessarily onerous burdens on accommodation providers, nor intrude unnecessarily on the privacy of

² It might be useful to consider the findings of the Office of Tax Simplification in relation to the Annual Accounting Scheme for VAT. See *Review of Value Added Tax – Progress report and call for evidence* – The Office for Tax Simplification (February 2017), p.14:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/613522/VAT_review_interim_report_final.pdf

visitors; and thought should be given as to how much information local authorities can realistically handle and process in a meaningful way. In all cases, if there is a blanket charge, with certain visitors removed from scope by exemption, information showing that a visitor falls within an exemption will be required and the number of nights of stay for that individual. Moreover, the information needs to be sufficient to enable audit of the visitor levy – to assess its effectiveness.

- 17.2 Flat rate per person per night – number of individuals staying in the accommodation each night, in order to ensure the levy can be charged accurately and proof can be provided to the local authority.
- 17.3 Flat rate per room per night – number of rooms let per night; number of rooms in each unit of accommodation in relation to self-catering lets – this will help prove that the figure for the number of rooms let per night is correct.
- 17.4 Percentage of total accommodation charge – cost of accommodation per night; total cost of accommodation let out.
- 17.5 Flat rate per night dependant on the quality of accommodation – given this option is not on the table currently, given the lack of a mandatory system for assessing the quality of accommodation in Scotland, we do not comment on this option.

18 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?

- 18.1 As a starting point, local authorities can no doubt use existing lists such as the Non Domestic Rates valuation roll and the Council tax valuation list. We agree that this will help to draw up an initial list, but in order to ensure the list is comprehensive and updated as required, further measures will be necessary. Self-declaration may work to a point, but will depend on raising awareness among potential accommodation providers and ensuring that they realise they fall within the scope of the levy. It may also be necessary to have resources that enable local authorities to identify accommodation providers that do not self-declare – this will mean the need for training of personnel and giving them statutory information / investigation powers. There needs to be clarity about whether this extra resource and training will require extra funding for local authorities and where such funding will come from.
- 18.2 In terms of self-catering accommodation, and in particular second / holiday homes that may be let out by their owners, care will be needed to define what falls within the definition of commercially-let accommodation. Some holiday home owners may use the holiday home themselves, and also let it out to friends and family, for a nominal sum. Ideas for possible definitions could be drawn from those used by HMRC for Furnished Holiday Lets or by local authorities for Council Tax purposes.
- 18.3 Consideration should also be given as to whether some sort of licensing system is required, such that in order to obtain a license the accommodation provider would have to make a commitment to comply with the visitor levy.

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

- 19.1 It may be appropriate to have the ability to impose proportionate penalties where accommodation providers deliberately fail to self-declare. However, there would need to be a light-touch approach to the use of penalties in the first year of implementation of the levy in a particular local authority area, and regard would have to be given as to the nature of the accommodation provider and whether it was reasonable for them to identify themselves as falling within the scope of the levy. Moreover, in order to ensure fairness and the perception of fairness, penalties should not be imposed unless there has been robust awareness-raising about the levy, the need to self-declare and the likelihood of penalties for non-compliance and their level. In addition, the processes for self-declaration need to be simple and easy to access.
- 19.2 In terms of awareness-raising, thought should be given not just to general publicity but also as to whether it can be targeted at organisations / through processes that accommodation providers are likely to use. For example, information about the levy could be provided with Council Tax and Non Domestic Rates notices, or through third-party platforms.

20 Q18: Should non-compliance by an accommodation provider be subject to a civil penalty (ie 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?

- 20.1 We think that it would be appropriate for non-compliance to be subject to a civil penalty. We do not comment on the specific level of the penalty in numerical terms, but note that it should be proportionate.
- 20.2 We think it is important that the level reflects the purpose of deterring non-compliance, rather than serving as a revenue-raising tool. We think it is worth looking at the HMRC discussion document on penalties, which established that penalties should aim to encourage compliance and discourage non-compliance.³ Another two principles set out by HMRC are that penalties must provide a credible threat and that customers should see a consistent and standardised approach. So, there must be the operational capability and capacity to raise penalties as set out in the legislation. This means that it is important that a local authority that brings in the visitor levy has the capability of detecting non-compliance and enforcing penalties, otherwise the levy will be brought into disrepute, as there is a danger that local authorities will only be able to enforce it in relation to easily identifiable accommodation providers, who will feel it is therefore inequitable.
- 20.3 It may be that local councils need extra resource and training of staff, as well as IT systems, to ensure they can enforce the visitor levy effectively and consistently. There needs to be clarity about whether this extra resource and training will require additional funding for local authorities and where such funding will come from.

21 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

³ <https://www.gov.uk/government/consultations/hmrc-penalties-a-discussion-document>

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

21.1 It is important that there is local consultation beforehand, to ensure buy-in from local stakeholders. As the Scottish Government roundtables and a CIOT poll question have demonstrated, the idea of a visitor levy can generate strong views both in favour and against it.⁴ This is not helped by the fact that there may be a perception of inequity surrounding the levy, as there are practical difficulties around applying the levy to all types of accommodation and all visitors, which mean that some categories will not fall within scope of the levy.

21.2 In relation to the CIOT poll, we note the following points, which may be of interest:

- The question asked respondents (1,212 Scottish adults) ‘As you may know, the Scottish Government has decided to give local councils power to decide whether they want to introduce two new taxes and, if so, what the rate of that tax would be; the first is a tax which would be paid by tourists visiting Scotland and the second is a tax which would be paid by, motorists who use their car to get to work. With this in mind, which one of the following statements comes closest to your view?’
- 32% of respondents chose ‘Scottish government should have the power to introduce all new taxes and have the power to set the rates in all parts of Scotland’
- 37% of respondents chose ‘Scottish government should have the power to introduce all new taxes, but local councils should have the power to set the rate for their part of country or to decide not to implement the tax in their area’
- The remaining respondents were split between not knowing and thinking the Scottish Government should not have the power to introduce new taxes.

This demonstrates the fairly even split in terms of the power to set rates. The question addressed the issue of rates in particular because this is the most visible part of a tax and the simplest concept for non-tax experts to grasp.

21.3 We think that all the requirements listed are appropriate to be met by local authorities prior to the introduction of a levy – indeed, in most cases, we think that it would be in the best interests of the local authority to meet the requirements to ensure the levy operates effectively.

21.4 Additional requirements that it would be sensible for local authorities to meet would be to set out how they are going to identify, record and maintain a record of accommodation in their local authority to which the levy applies, and their approach to compliance. In relation to compliance, it is important not only for the

⁴ The results of the poll can be accessed on the CIOT website. The relevant question was question 6 of 6: <https://www.tax.org.uk/media-centre/press-releases/press-release-poll-scots-still-failing-understand-devolved-taxes-support>

local authority to know how its compliance processes will operate, so that staff operate them in a consistent manner, but it is also important for this to be communicated to accommodation providers, as this can help ensure that they understand their responsibilities.

22 Q20: Should Scottish Government be able to prevent a local authority from applying a visitor levy? Q21: Under what circumstances should Scottish Government be able to do this?

22.1 No.

23 Q22: What requirements might be placed on local authorities to engage with local stakeholders to determine how revenues are spent? Q23: How might this engagement be best achieved?

23.1 One option might be to place a requirement on local authorities to run a consultation in order to engage with local stakeholders that have an interest in tourism.

23.2 We think it would be advisable not to constrain decisions about how revenues should be spent. There should perhaps be a requirement for spending to be broadly tourism-related, but being overly-prescriptive might cause issues in years when the levy generates either unexpectedly low revenues or unexpectedly high revenues.

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

24.1 We think that spending of visitor levy revenues should be determined by each local authority. As noted above, we do not think spending decisions should be overly-restricted. It might be that revenues from a visitor levy exceed funds necessary for a local tourism strategy (depending on the strategy), so it would not be wise to hypothecate purely to the strategy.

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

25.1 There should be a requirement to report publicly on an annual basis, but this does not necessarily have to be separate from the local authority's annual report. This should include information about the costs of implementing the levy and of administering it.

25.2 In addition, it would be sensible to think about communications with the general public, to ensure that the local community can see the benefits for them of the visitor levy.

25.3 There should be the possibility of action being taken if it was felt there was abuse of the visitor levy by a local authority. It might be simplest to provide for Scottish Ministers to have such oversight, but another option might be for an arrangement similar to that that provided by the Scottish Environment Protection Agency (SEPA) for the Scottish Landfill Communities Fund.

- 26 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?**
- 26.1 As noted above, we do not think spending decisions should be overly-restricted. It might be that revenues from a visitor levy exceed funds necessary for spending within that location, so it would not be wise to hypothecate purely to that one area.
- 26.2 It should be noted that a restriction of this type would add to administrative burdens as well as reduce flexibility in relation to spending decisions.
- 27 Q27: Is the name 'visitor levy' appropriate for the new powers proposed in the consultation document?
Q28: If not, what do you consider to be a better alternative and why?**
- 27.1 Yes, we think 'visitor levy' is an appropriate name. In particular, the word 'levy' is better than the word 'tax', which may have more negative connotations for stakeholders. In addition, 'levy' suggests it is a contribution towards services being provided.
- 27.2 Additional considerations might be whether or not to include the words 'transient' and / or 'overnight'. Transient will be less well-understood, and so is probably best avoided – it may also not reflect accurately the scope of the charge. Arguably, in order to be as transparent as possible in terms of name, it would be best to include the word 'overnight', given the proposal is that it will not apply to day visitors.
- 28 Q29: What requirements should apply to ensure accommodation prices transparently display a visitor levy?**
- 28.1 We think that the charge for the visitor levy should have to be displayed separately on receipts, price lists, online booking platforms etc., in a similar manner to VAT.
- 28.2 Making the levy more visible will enable local authorities to more easily publicise the benefits from raising the levy. This will help to ensure that local authorities aim to make their administration of the levy as efficient as possible and also help to ensure accountability in terms of spending decisions.
- 29 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?**
- 29.1 One option would be to set out a model similar to that used for the introduction of Land and Buildings Transaction Tax (LBTT) and subsequent changes to its rate etc. This would mean that, in order to fall within the charge, the date of the stay would have to be on or after the date of introduction of (change to) the visitor levy, but in addition, the accommodation must have been booked and paid for on or after a transitional date, say one year beforehand. So, for example, if a local authority planned to introduce a visitor levy on 1 April 2023, this would apply to any overnight stays in commercially let accommodation on or after 1 April 2023, provided they had been booked and paid for on or after 1 April 2022. A date of one year might be appropriate, to take into account the need for consultation around the levy and the use of advance booking in the case of conferences etc.

29.2 One consideration in this context might be the treatment of block bookings of rooms by tour / holiday operators, as they may book (and pay for) accommodation more than one year in advance, but there may not be a named holiday-maker / tourist until much closer to the date of stay. So, careful consideration might need to be given as to what constitutes 'booking and payment' for the purposes of transitional arrangements.

29.3 Consideration will also have to be given as to how to treat visitors who have booked but not paid in advance and those who have booked and paid only a deposit, rather than in full, in advance.

30 Q31. Should these transition arrangements be set out in a national framework or be decided by local authorities? Set out in a national framework / Decided by local authorities / Don't know

30.1 In order to ensure consistency and certainty, these transition arrangements should be set out in a national framework.

31 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?

31.1 No.

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

32.1 No.

33 Acknowledgement of submission

33.1 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.

34 The Chartered Institute of Taxation

34.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an 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. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

29 November 2019