

## Gerald Eve's Business Rates Update

October 2015

### Is anyone listening to the views of businesses?

The Chancellor won all the plaudits at the Conservative Party Conference last week with his announcement of a radical reform of business rates involving a devolution of rates setting and revenues to local government. He said



Today I am embarking on the biggest transfer of power to our local government in living memory. We're going to allow local government to keep the rates they collect from business. That's right, all £26bn of business rates will be kept by councils instead of being sent up to Whitehall.

However, in addition to questioning whether his proposals are anything like as game changing as he wishes us to believe, we have to ask why the clear and consistent views of businesses seem to have been ignored? This relates not just to his conference announcements but even more so in respect of appeals reform included in the Enterprise Bill laid in Parliament last month.

The previous Conservative led coalition Government responded to the cacophony of businesses' complaints regarding the ever increasing costs of the inflexible rating system, by launching a series of reviews. It consulted in December 2013 about **appeals reform**, launched a **review of business rates administration in 2014** with a **second round discussion paper**, followed by a **review of the structure of business rates**.

Businesses and their trade and industry bodies have engaged fully with these Treasury led reviews but it seems that the Government intends to ride roughshod over businesses' opinions and wishes.

### What next for the review of business rates?

None of this augers well for the structural review of business rates which is planned to conclude by the end of 2015 in relation to which we can expect announcements in the Autumn Statement on 25 November.

Whilst we understand that the party conference announcements are not the conclusion of this review, we fear that what is still to come will leave businesses cold. They have had high expectations that the business rate might be cut – it is by a distance the highest comparable local property tax in the world – but the Chancellor's reference to the £26bn presently raised from business rates in England being retained locally in future seems to dampen any hopes of a significant cut. Further announcements seem likely to relate more to administrative matters.

## The proposed three stage appeals process

One of these is the vexed issue of appeals against Rateable Value assessments. There is undoubtedly a major problem with some 270,000 appeals outstanding as at April 2015 but with the Valuation Office Agency only resourced to clear about one third of these this year. The Government wishes to see a substantial reduction in appeals but in our view, and in the view of the leading business organisations we work closely with, it is approaching the issue wholly inappropriately.

It recognised the problems with great clarity in December 2013 when it first proposed changes to come into force in October 2014 but were shelved in the face of business opposition, yet have re-emerged in the Enterprise Bill. It said “ratepayers cannot see the rental evidence on which rateable values are based and make large numbers of speculative appeals with little or no explanation of why they think their rateable value is wrong”. It recognised that “currently limited information is available in the public domain that allows the ratepayer to fully understand and check the accuracy of their rateable value before making a formal challenge”.

Therefore “ratepayers and their agents are unable to see the underlying evidence and may feel they are forced into making a challenge so as to draw out the evidence from the Valuation Office Agency”.

The consultation paper’s proposed solution was to require the VOA to provide the underlying rental evidence up front, which would enable ratepayers to check and audit their assessments against this evidence and either accept them or challenge them formally.

Any such formal challenge would, however, need to be supported by details of the valuation sought in place of the assessment and by the rental evidence which the ratepayer relied on in support of his lower valuation.

We and business organisations supported this approach, but it became quickly apparent that the laudable aims were going to fail because of the VOA’s assertion that legislation places restrictions on when it can share otherwise private information.

The claim was made that, in effect, outside of a formal appeal process the Agency cannot disclose the rental information that it has collected and relied upon.

Business organisations (including CBI, FSB, BCSC, BRC and BPF) objected to the government’s proposals. For example, the Confederation of British Industry said that the proposals “would make little or no difference to the efficiency of the system or enable businesses to check their rateable value without making a challenge”. The British Property Federation and the British Council of Shopping Centres said “we believe... the level of information provided should be more detailed and made available at the pre-challenge stage”.

## The Enterprise Bill

Clause 22 of the Enterprise Bill includes provision for greater information sharing but only between the VOA and local authorities. There is to be no change to the 2005 legislation which the VOA claims restricts them from sharing the rental evidence on which their valuations are based until late in the appeals process.

Instead, Clause 23 provides the framework for a new appeals regime which seems designed to make it as difficult and costly for ratepayers to navigate, such that appeal numbers are massaged down by the obstacle course laid out by the VOA.

Firstly, even before being permitted to challenge an assessment, a ratepayer will have to have checked the facts used by the VOA, such as floor areas, identified any differences and sought to resolve these. We know from current experience that VOs often do not visit appeal properties until the last minute and we can see significant delays under the new regime before one can even launch a challenge.

Once facts have been agreed, the ratepayer will be able to lodge a proposal to reduce the assessment but is likely to have to provide evidence and justification for the value sought. The Bill includes provision for the VOA to fine ratepayers up to £500 should they ‘knowingly, recklessly or carelessly provide information which is false in a material particular’ such as – we speculate – supplying incorrect details of the rent for the property.

The VOA would then consider the proposed valuation and ratepayer supplied evidence and after a period still to be specified (12 months was suggested in the 2013 consultation but longer for revaluation appeals) the VOA would issue a decision notice. This could then be appealed formally to the Valuation Tribunal but Clause 23 includes a provision that, for the first time ever in rating appeals in England, a fee might be charged for making such an appeal.

## Shifting the burden onto ratepayers

The Government’s proposed approach in Clauses 22 and 23 shifts the burden of proof from the VOA, which has access to all relevant rental evidence, to the ratepayer who does not. Checking ones assessed value is therefore likely to be more costly and time consuming for businesses and whilst this may result in a reduction in formal ‘appeals’ there is unlikely to be any lessening of the workload within the system.

It seems wholly unacceptable for the State to impose such a significant tax without any obligation upon it to justify the derivation of that tax liability, especially in a regime whereby the tax payer is unlikely to be either in possession of, or easily able to obtain, the relevant underlying evidence.

It should be a fundamental pre-requisite of any modern property taxation system that the tax payer should be able to gain reasonably easy access to relevant information which will enable him to check the basis of the tax. He should be able to view information which the Valuation Officer has relied upon to set his rateable value.

A consistent call from business organisations in their responses to the Government's review of business rates is the need for a more responsive system by way of more frequent revaluations. The proposed appeals system within Clauses 22 and 23 predicates against these as they can only be delivered if businesses have confidence in their assessed values by having them justified up front by the VOA and do not feel the need to appeal. We are already working with the leading trade and industry organisations in an endeavor to influence improvements to the draft legislation. Appeal numbers should be reduced not by beating businesses with the stick of information requirements, fees and fines, but by the carrot of the VOA justifying the assessed values with the relevant evidence.

As the Federation of Small Businesses wrote in their response to the Review of Business Rates 'To make the NDR system more transparent to rate payers, the full range of evidence used to determine rateable values must be disclosed to them. Aside from the inherent unfairness of withholding the basic information on which tax liability is based, this practice has the effect of generating significant numbers of largely unnecessary appeals.'

## Devolution of business rates – radical or 'smoke and mirrors'?

*Moving from one set of radical, but unwanted, reforms to the Chancellor's conference speech. We should say at the outset that little detail has been provided and we have therefore had to read between the lines to some extent, but we believe that once the full proposals emerge they will show an element of 'smoke and mirrors'.*

From 1990, when Margaret Thatcher nationalised the business rate, until 2013, local councils had no direct interest in rates collected as their grant funding from central Government was unaffected by their rates revenues and its growth or decline. In order to incentivise business friendly behaviour and lead councils to encourage property development, the Government introduced a complex Business Rates Retention scheme in 2013 whereby 50% of growth in rates collected above baseline revenues were retained locally. Similarly, reductions below baseline are borne equally by local and central Government. The baselines were set having regard to the fact that some authorities collect far more rates revenues than their Government assessed 'need' (e.g. Westminster and City of London which contain over 10% of the total Rateable Value in the country) whereas many others with a low rates base can never collect as much as their 'need'. There is thus a redistribution scheme with a series of tariffs and top-ups with money taken from the 'rates rich' authorities used to top up the 'rates poor' councils.

George Osborne grabbed the headlines with the claim that by the end of this Parliament local councils will be able to retain all the rates they collect. This gives the impression that each council will keep what it collects but we think it unfathomable that there will be no redistribution in future. Whilst this would be great for Westminster and would enable it under the new proposals to cut its business rate, it would bankrupt councils up and down the land. Instead, what we believe the Chancellor actually means, is that the aggregate £26bn collected by councils will be fully returned by Whitehall through the redistribution mechanism. Presently, Government returns less than the £26bn collected but the promise of full repatriation from 2020 will not create a financial bonus for local government as it will be accompanied by new obligations and burdens.

## The 'abolition of the UBR' – we think not

*New baselines will be set following which councils will be able to retain 100% of the growth in rates receipts compared with the present 50%. They will be empowered to cut the Uniform Business Rate (UBR) and the hope is that local government will do so to incentivise businesses to move to their area. The Chancellor presented this as the 'abolition of the UBR' but we think this is true only to the extent that it will no longer be 'Uniform' if councils do introduce local discounts.*

But will they? Since 2012 local authorities have been empowered to grant discretionary rates relief as they think fit, but very few have done so, because they have to meet 50% of the cost at a time when funding for local government has been slashed. How realistic is it to expect them to extend a UBR cut to all their ratepayers when they will be meeting 100% of the costs of so doing? We can see some larger councils being in a position to do so, especially if they see their revenues increasing through 100% retention, but the 'rates poor' councils which desperately need to encourage new businesses to their area will probably not be able financially to reduce their tax rate and still meet all their obligations.

Another reason why the business rate will no longer be 'Uniform' is that certain authorities, likely to be those with elected mayors, will be empowered to levy a business rate top-up to fund infrastructure improvements, not dissimilar it seems to the existing Business Rate Supplement applied to RVs in London above £55,000 through which Crossrail is being part funded. HM Treasury suggests that the new supplements are likely to be pegged at 2 pence per £ RV, as with the Crossrail supplement, but there are two key differences. One is that there is no suggestion that the new premiums will exclude smaller properties; the other is that the power to levy them will probably rest with unelected Local Enterprise Partnerships. Both of these may be unacceptable to ratepayers.

## The Government has not been listening – businesses must up the game to have their voices heard

The leading business organisations have been muted in their responses to the conference announcement, mostly welcoming the potential for reduced rates whilst awaiting the ‘devil in the detail’. It is surprising though that this ‘radical’ reform was not trailed in any of the Government discussion papers in the last couple of years. Businesses were though asked whether they favoured a move to 100% rates retention and their overwhelming response was that the Government should wait to discern and evaluate the results of the pilot schemes in Greater Manchester and Cambridge announced in the March 2015 Budget, before making any further changes to rates retention. Yet here we are just a few months later and the Government is riding roughshod over businesses’ views.

In addition to calls for a transparent and responsive business rates system, ratepayers are desperate for their bills to be cut. It seems that the Government’s preferred solution to these calls is to wash its hands of the problem by giving powers to local government to effect cuts and thus be able to deflect criticism.

We will have to await further announcements in the Autumn Statement on the structural review of business rates as well as the details of the Chancellor’s radical reform, but from what we have seen over recent weeks we think it highly unlikely that the Government will deliver what it set out to achieve when launching its review of the rating system i.e.

‘The next step is to improve the business rates system in England so that it works better in the 21st century. We want to find ways to make the business rates system simpler, more transparent and more responsive to economic circumstances.’

Whilst we have a relatively short time to achieve a simpler and more transparent appeals system as the Enterprise Bill proceeds through its Parliamentary stages, there will be greater opportunity to shape the wider system during the remainder of this Parliament. We’d welcome your views so that we can feed these in to our discussions with the relevant authorities.

## Gerald Eve’s UK office network

Gerald Eve is the pre-eminent business rates adviser. We currently advise a quarter of the FTSE100 companies on rating matters. We have saved our clients occupying over 70,000 properties throughout the UK more than £1.9bn in rates liabilities over the last five years.

We are very keen to tell you more about our approach and how we can assist you, so please contact **Jerry Schurder** on **+44 (0)20 7333 6324**, **jschurder@geraldve.com** or your usual Gerald Eve contact to find out more.

London (West End)  
72 Welbeck Street  
London W1G 0AY  
Tel. +44 (0)20 7493 3338

Leeds  
1 York Place  
Leeds LS1 2DR  
Tel. +44 (0)113 244 0708

London (City)  
46 Bow Lane  
London EC4M 9DL  
Tel. +44 (0)20 7489 8900

Manchester  
No 1 Marsden Street  
Manchester M2 1HW  
Tel. +44 (0)161 830 7070

Birmingham  
Bank House  
8 Cherry Street  
Birmingham B2 5AL  
Tel. +44 (0)121 616 4800

Milton Keynes  
Avebury House  
201-249 Avebury Boulevard  
Milton Keynes MK9 1AU  
Tel. +44 (0)1908 685950

Cardiff  
32 Windsor Place  
Cardiff CF10 3BZ  
Tel. +44 (0)29 2038 8044

West Malling  
35 Kings Hill Avenue  
West Malling  
Kent ME19 4DN  
Tel. +44 (0)1732 229420

Glasgow  
140 West George Street  
Glasgow G2 2HG  
Tel. +44 (0)141 221 6397

### Disclaimer & Copyright

Gerald Eve’s Rating News Update is a short summary and is not intended to be definitive advice. No responsibility can be accepted for loss or damage caused by any reliance on it.

© All rights reserved

The reproduction of the whole or part of this publication is strictly prohibited without permission from Gerald Eve LLP.