GERALD EVE'S
BUSINESS RATES UPDATE
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POST BUDGET ANNOUNCEMENTS

As promised alongside the business rates measures included in Budget 2016, which we covered in our recent Business Rates Update, the Government has now published two further documents, which were slipped out without any announcement late on the evening before Good Friday – trying to keep them under the radar perhaps?

One paper is a summary of the responses to HM Treasury's review of business rates and the other is a 'discussion document' on issues related to delivering more frequent rating revaluations.

Responses to the review of business rates

We criticised the business rates announcements in the Budget as being less of a structural review of the system, as had been promised, and more of a rag bag of disparate measures. Whilst the summary of responses document skilfully knits together the Budget decisions and presents them as being precisely what respondents called for, it is clear that the Government has avoided addressing some of the key asks from large businesses especially.

The overriding call from business organisations was for a reduced burden, drawing on comparisons of the excessive tax rate in the UK, higher than any other local property tax worldwide. Whilst the Government specifically asked for respondents to identify 'examples from other jurisdictions and tax systems', the summary of responses makes absolutely no mention of them. Instead it notes that the Budget announcements will reduce rates by £6.7 billion (over a 5 year period) and claims that this brings benefits not just to smaller businesses but also to others because 'taxes for all businesses paying rates will be cut'. In truth, the only 'cut' for large businesses will be a lesser increase in rates bills after 2020 because annual increases will be linked to CPI instead of RPI.

A proper review of the structure of business rates would have included detailed consideration of the need for and merits of the plethora of rates reliefs and exemptions, including empty rates relief, charity relief and agricultural exemption, to name but a few.

The Government's response is simply that it 'has also considered stakeholders representations on empty property relief and charity relief and has decided to maintain support at its current levels'. Exemptions are not even mentioned.

The call, from manufacturers especially, for a review of those items of plant and machinery included in rating assessments and a removal from rates of some of them is also given short shrift on the basis that 'this would be too costly'.

Delivering more frequent revaluations

The key structural change from the review of business rates is for future revaluations to be undertaken more frequently, at least every three years. Whilst one might have anticipated a formal consultation including detailed proposals, what has now emerged is a **'discussion document'** devoid of any recommendations.

Having reviewed the document, we are left in some doubt as to the Government's genuineness about this proposal. There is significant negativity about the potential to deliver more frequent revaluations without major changes likely to be unpalatable to the Exchequer, or businesses, or local government, or to all of them. The paper gives no indication as to when the Government thinks it might be able to commence a more frequent revaluation cycle and one would be forgiven for thinking that the issues on which views are sought reveal that this is an exercise in delaying implementation.

Having said that, some further delay is clearly acceptable if the outcome is a sustainable system and the discussion paper does seek views, for the first time, on whether self-assessment is a potential way forwards.

Is the Government kicking more frequent revaluations into the long grass?

The reason we question whether there is a genuine intention to revalue more frequently is partly that the Government is repeating questions to which business has given a very clear response, but also that it can see only problems and cost in achieving more frequent revaluations.

The paper again asks for views on whether the current bespoke system of assessments reflecting each property's individual characteristics should be replaced with what it calls a 'formula option'. Under such a scheme all properties of the same use type in a local authority area would be valued at the same unit rate, regardless of precise location, or quality, or shape etc. The Government floated very similar options in its **April 2014 review of business rates administration** – albeit at that stage called a 'banding' or 'zoning' system – to which it received a very clear response from ratepayers that they wished to retain the long standing approach of individual valuations based on each property's unique characteristics, When reporting on the review, the Government's own response noted 'Ratepayers have sent a clear message to the Government that they support an individual approach to valuation …. Ratepayers would not support a move away from this towards more 'broad brush' approaches such as those discussed in the discussion document. Therefore The Government confirms it has no immediate plans to change the current individualised approach to valuation'. We fail to understand what purpose can be achieved by asking the same questions again.

And the paper can see only problems with retaining the existing system but with a more frequent revaluation cycle. It identifies the problems, without offering any solutions, as including the following:

- **A need to collect rental information from ratepayers more frequently.** This should not be a show stopper. The Valuation Office Agency (VOA) already collects information between revaluations and with modern technology could do so far more efficiently. Business organisations that have called for annual valuations in the future have already accepted that this may require formal registration of all leases.

- **A need for the VOA to recruit additional surveyors** partly as revaluations would occur more frequently but also to handle what is suggested would be an upsurge in appeals. There is no recognition in the document that the Budget decision to permanently exempt 600,000 small properties from business rates will lead to a reduction in appeals. Nor is there any appreciation that the shorter the revaluation cycle, the less the incentive to appeal.

The most frustrating omission, however, is the Government's continued refusal to accept that if the VOA was required to share the underlying rental evidence with ratepayers, in advance of any appeal, then businesses would be able to audit their assessments and would be likely to accept the vast majority if they could see they are supported by the evidence. This message has been hammered home by the leading business organisations in their responses to the **'Check, Challenge Appeal' consultation paper** but the Government continues to refuse to hear the clear message. It is all the more surprising therefore that one of the issues the paper identifies for consideration in relation to the possibility of moving to a self-assessed business rates system, is whether the VOA should publish rental information to assist ratepayers to prepare their own rateable values.

Or, is self-assessment the solution?

The Government has been encouraged to explore the possibilities for a self-assessed system by some of the responses it received to its review of business rates. It sees self-assessment as a 'challenging' option but one 'worth exploring further'. We agree.

The paper identifies that:

'Whilst a self-assessment system for business rates would place new obligations and responsibilities on ratepayers it could benefit businesses by:

- delivering a more responsive business rates system by allowing more frequent revaluations
- giving ratepayers greater control in ensuring their valuations were up to date so that they pay the right amount of business rates
- making the business rates system more integrated with and aligned to the rest of the UK tax regime
- significantly reducing the number of appeals as customers would be producing their own valuations and so would only need to appeal if there was an issue with the valuation following VOA compliance activity'

The key challenge seems to be related to this 'compliance activity' – in other words the checks that would need to be undertaken by the VOA to ensure that self-assessed valuations were acceptable. This would still presumably require significant resource from the Government body whose role would change from assessing to policing. Ratepayers would be deterred from undervaluing their properties by 'interest and penalties' if their assessments were found to be low, with the penalty varying dependent upon the 'size of inaccuracy'.

It appears to us that whilst self-assessment might sound attractive on the face of it, there is a risk of both unfairness and uncertainty. The unfairness would arise if two identical properties declared different, but still acceptable, valuations and the uncertainty results from the ongoing risk that the assessing body might claim a property to have been undervalued, with the need for some form of appeals process. Unless the VOA shares all the rental evidence it has collected up front, or if there is a public and complete Lease Register, the VOA will always possess more evidence than ratepayers which increases the risk of challenge to self-assessed rateable values.

We also see considerable difficulties in devising an appropriate 'penalty' system. Rating law is exceptionally complex and we have seen in recent months that it has taken the Court of Appeal and even the Supreme Court to decide critical aspects of the law – surely a fine would be inappropriate where there was a genuine attempt to supply a fair and supportable valuation even if ultimately found to be inaccurate.

On balance, and despite the likelihood that self-assessment would lead to an increase in work for professional rating experts, our preference is for a continuation of the existing system but with more frequent revaluations enabled by a requirement for the VOA to be transparent and justify assessments to ratepayers.

However, we'd very much welcome your views which we will include in our response to the discussion document by the due date of 8 July 2016.

Gerald Eve LLP 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 £2bn in rates liabilities over the last five years.

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