CHECK, CHALLENGE, APPEAL

Long ago – last November in fact – **we summarised** the Government's proposed draconian changes to the procedures and requirements for challenging rateable values following the 2017 revaluation. Consultation closed in early January and it has taken Government over six months to determine how it will proceed and there are still many details still to be finalised. **Here is a link** to the Government's summary of consultation responses and another to **its decisions**.

The problem that the Government perceives and which it is seeking to overcome is, as we explained in last **October's Update**, the large number of appeals made against rates assessments – more than 900,000 so far challenging the 2010 rateable values. Not only is this a substantial number requiring considerable resources to handle but the Government asserts that many are unnecessary, or even frivolous, given that it is claimed that 70% of appeals lead to no change in assessment.

We believe that these 'unnecessary' appeals are normally required as the only method available presently to extract from the Valuation Office Agency (VOA) the evidence it has relied on in setting rateable values. If the VOA shared this data up front these appeals would truly be unnecessary, as ratepayers would mostly be satisfied with the clarification they have received.

We assisted many of you to respond to the consultation paper and the thrust of your message was acknowledged by Government in its summary of responses:

> " Business representative groups and associations were sceptical for two main reasons: (a) they believe that ratepayers need access to more information earlier in the process in order to understand their assessments, and (b) they do not anticipate that the system will deliver the suggested benefits, for example because of constraints in Valuation Office Agency (VOA) resources.
>
> There were widespread calls for the VOA to demonstrate at Check stage what evidence they have used to arrive at a valuation. "

The Government is going to proceed, nonetheless, with its consultation proposals, pretty much unamended, in a way that is more onerous for ratepayers and will require them, or their advisors, to undertake far more work up-front than at present. The VOA will not share any of the evidence underlying their valuations until after a ratepayer has navigated a new Check stage and submitted a formal Challenge. This document will need to include a proposed alternative valuation together with supporting evidence and argument. Only then will the VOA be prepared to open negotiations and share some of the rental evidence it has relied upon.

A further consultation on the details together with draft regulations is promised shortly, but based on information we have gleaned to date we can summarise the planned new process and timescales as follows:

Check

(12 months allowed from whenever the ratepayer decides to submit a Check)

This process will be undertaken online but before doing so the ratepayer will have to have identified its properties (in itself not a straightforward matter as addresses in the Rating List often vary from postal addresses or those used by businesses) and registered as an 'interested person' for them. It will obtain login and password details and will then be able to nominate an advisor to act on its behalf.

In addition to being able to view the summary valuation presently provided, the ratepayer will also see physical facts known to the VOA – examples given are 'age of the property and age of refurbishment, provision of heating, lifts or air conditioning'. One will have to either confirm the accuracy of each of the facts, in which case one can proceed to the Challenge stage within four months, or seek to correct any inaccurate or missing information. An inaccurate declaration or data omitted at this stage could be costly as there will be a system of penalties of up to £500 for providing false information, whether 'carelessly, recklessly or knowingly'.

If the facts confirmed by the ratepayer lead the VOA to consider the assessment to be incorrect it will amend it – by way of increase if necessary.

If more than 4 months have passed since the completion of Check, one will have to undergo the Check process again before proceeding to Challenge.

Challenge

(This runs for up to a further 18 months unless extended by the parties by agreement)

The ratepayer has four months from conclusion of Check to submit a complete Challenge which will need to include:

i. grounds for the Challenge

ii. an alternative rateable value or alternative rating list entry

iii. evidence or other relevant information and a statement explaining why that evidence or information supports the proposed alternative.

Although not clarified in the formal papers issued thus far, we understand that once a Challenge has been submitted a ratepayer will not be able to seek a lesser value, even if fresh evidence comes to light. Neither will they be permitted to introduce new evidence other than in rebuttal to a response provided by the VOA in what is euphemistically described as a 'tailored package of information'. The only exception to this limitation is if new evidence becomes available which could not have been ascertained at the time the Challenge was made.

This is exceptionally onerous and burdensome upon ratepayers – as well as unjust given the absence of any up-front justification or supporting evidence from the VOA – and will require appellants to have obtained all potentially relevant evidence prior to making a Challenge.

Following Challenge the VOA will supply evidence in response to that submitted by the ratepayer. This information exchange and subsequent negotiations will hopefully lead to agreement, in the absence of which the VOA will issue a reasoned Decision Notice and amend the valuation if that is its decision.

Appeal

(must be lodged within four months of a Decision Notice)

The VOA's decision, or absence of one 18 months after the Challenge was submitted, can be appealed to the Valuation Tribunal for England (VTE) upon payment of a fee, likely to be £300, refundable if the appeal succeeds. Another key change, which is being imposed in an endeavour to ensure that all evidence is tabled at the Challenge stage, is that the VTE will only be permitted to take into account evidence that was adduced prior to the Appeal. This is a sea-change from accepted practice and indeed obligation on an expert witness, which is to have regard to all relevant evidence and to present an impartial valuation to the judicial body. Ratepayers and their advisors will have to formally document all evidence that has been referred to during the Challenge stage, so as to ensure that its use is not denied at the later Appeal stage. This all seems to be a triumph of process over substance and fairness.

Small businesses, as defined in the Companies Act 2006, will be subject to modest amendments to the CCA process and procedures, including being given a degree of prioritisation by the VOA, reduced fees for appeals and lesser fines for the provision of false information.

Amongst the significant issues which await clarification, notwithstanding that CCA has to be implemented in a little over eight months with considerable software development required to support the new procedures, are:

a) **The role for local councils** – with 50% of all rates growth retained locally and plans to extend this to 100% (see below), local councils have a direct and vested interest in rateable values and have called for Government to permit them to be actively involved as a party to every appeal. The last thing that such an elongated challenge process requires is such third party involvement, but it seems that local government may have its wishes granted to at least some extent.

b) **Material Change of Circumstance (MCC) appeals** – the new CCA process does not sit comfortably with MCC appeals given that it is nigh impossible for a business to determine the value impact of an MCC at its onset (such as temporary disturbance from roadworks or the permanent impact of a new shopping centre). An as yet undetermined variation to the standard CCA procedure will be required for MCCs.

c) **Non-standard properties** – the VOA has not yet begun to consider how Check will be carried out for specialist properties valued using the Contractors Basis (based on decapitalised construction costs and whose valuations can often run to hundreds of lines) or using the Receipts and Expenditure method. The VOA does not expect to have an online system available for these properties by 1 April 2017.

d) **Participation by multi-site occupiers** – all of the VOA's programming for CCA to date (which has been demonstrated to us as a prototype for feedback) has been designed around the singleton user wishing to engage for a single or small number of properties only. We are presently acting in relation to over 68,000 properties in England and it would be hugely inefficient for us, or indeed for any ratepayer wishing to undergo Check for its own portfolio of properties, to have to scroll though many screens on an individual basis, entering data manually and then be unable to save such data within its systems. The VOA has been working on CCA since the consultation was launched in October 2015 and it is worrying to see how embryonic their outputs are to date. We have expressed our concern direct to the VOA and DCLG and will continue to endeavour to work with them to develop a solution for the digital age through which we can exchange data directly between our systems.

The planned CCA system relates presently only to England and the Welsh Government will have to determine its own path. We suspect they will follow suit as it will be more costly for them to engage the VOA to operate under a different regime for properties in Wales. Having said that, the Welsh have eschewed some of the most opaque aspects of the system that have applied to England, such as the enormous complexity of transitional relief and onerous burdens imposed by the Valuation Tribunal for England.

We are not anticipating any significant changes to the appeal regime in Scotland and the expectation is that revaluation appeals will have to be lodged by 30 September 2017, but without a requirement for an alternative valuation or detailed justification for the challenge. The Scottish Government has commissioned a review of business rates which is due to report in Summer 2017. Ken Barclay, former Chairman of RBS is leading the review and has just issued **this consultation** which asks only one question – "How would you redesign the business rates system to better support business and incentivise investment?"

DECAPITALISATION RATES FOR 2017 REVALUATION

The Contractor's Basis is used for specialised properties, when there is little or no direct evidence of actual rents available. Over 10% of all properties are valued using the Contractor's Basis including airports, oil refineries, major chemical works, steelworks, shipbuilding yards and public sector buildings which cannot be valued by other methods. It can also be used to value parts of a property (e.g. particular items of plant and machinery) otherwise valued on a rental basis.

With the recent announcement by the Scottish Executive of the rates that will be applied to convert adjusted construction costs to rateable value for properties valued using the contractors basis, we can now summarise the relevant rates for each country as set out below:

	2010 revaluation		2017 revaluation	
	Lower rate (education, healthcare, MoD properties)	Higher rate (other properties)	Lower rate (education, healthcare, MoD properties)	Higher rate (other properties)
England	3.33%	5%	2.6%	4.4%
Wales	2.97%	4.5%	2.1%	3.8%
Scotland	3.33%	5%	2.9%	4.6%

Whilst these reduced rates for 2017 are welcome, we still anticipate some significant increases in rateable value for many categories of specialist property, given the considerable growth in build costs since the last revaluation. There will though be greater variation in the 2017 revaluation assessments between the three countries given the increased differential in decapitalisation rates, especially for properties valued using the lower percentages.

OTHER LONGER TERM DEVELOPMENTS TO BUSINESS RATES

More frequent revaluations

One of the outcomes of the Government's review of business rates in England was the intention to move to revaluing property more frequently 'at least every three years'. We reported on the **associated discussion paper** in our **March 2016 update**.

We responded to the paper (copy **here**) and contributed to those made by the professional rating bodies and the leading trade and industry organisations. Our executive summary, the thrust of which was mirrored in many other responses we were involved in, reads:

We believe that whichever route is eventually taken, more frequent revaluations should result in an improved, more efficient system.

- We believe that this can best be achieved by maintaining the current system coupled with reform of the appeal system which we hope will be achieved following the implementation of the "Check, Challenge and Appeal" process and reform to the legislation if necessary to require that the VOA share evidence at an earlier stage.
- In order to further improve responsiveness we believe that the time between the antecedent valuation date (AVD) and List commencement should be shortened and we have set out in our responses how and why we believe this can be achieved.
- On balance our view is that a three yearly revaluation cycle with a one year AVD would achieve the optimum results for all stakeholders.
- We are of the view that there are challenges with the self-assessment option and whilst it could potentially be made to work for larger occupiers / businesses we do not see it as a solution for smaller businesses.
- Having regard to the significance of business rates in terms of a tax base we do not see the formula approach as an appropriate option.

Devolution of business rates – 100% rates retention

The Government's flagship policy and most significant outcome of the business rates review at least so far as local government is concerned, is the devolution of business rates to local authorities by 2020. We summarised the emerging policy in our **October 2015** update, since when there has been much spin about the benefits this will bring by way of an opportunity for councils to reduce their business rate or to increase it for specific infrastructure projects, but without any detail of its planned operation.

The Commons DCLG Select Committee undertook an inquiry into the proposals and issued a **critical report** highlighting significant information gaps and identifying a range of issues and problems that require addressing and resolving before devolution of business rates is introduced. In response DCLG has now issued a lengthy and highly technical **consultation paper** (containing 36 questions) and its own **call for evidence**.

It is premature to speculate how all this will impact on businesses. The critical issues, once the details have been finalised, will be whether local authorities will reduce the business rate in their area and whether adequate protections for businesses against unsupported increases are included. We will be following developments closely and will keep you advised. All we can say at the moment is that the outcome seems highly unlikely to meet Government's aspiration when it embarked on its review of business rates – to create a system fit for the 21st century incorporating simplicity and transparency.

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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