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...manifestly unfair and a breach of natural justice

## LATEST BUSINESS RATES PROPOSALS TREAT RATEPAYERS WITH CONTEMPT AND MUST BE OPPOSED

- Firms set to overpay millions in business rates under latest Government proposals.
- Proposed changes to outlaw most appeals in England leaving businesses limited means of challenging their assessments.
- If passed, regulations will grant power to dismiss appeals which fall 'within the bounds of reasonable professional judgement'.
- Now is the time to speak out and have your say. Responses to the consultation should be submitted by 5pm on 11th October.

In our July Business Rates Update we anticipated two further discussion papers later that month which were promised 'in the Summer' for decisions and implementation in time for next April's rating revaluation.

One related to proposals for transitional arrangements – the scheme which sees major changes in rates liabilities post revaluation phased in over a number of years. Whereas the equivalent consultation prior to the 2010 revaluation was released on 8 July in the year before, Summer 2016 has clearly been delayed as nothing has yet been issued. We are beginning to fear that the Government may simply impose a scheme rather than seek businesses' views.

The Scottish Government has, however, **launched a consultation** about the merits of a 2017 transition scheme north of the border, although there was none in Scotland for the 2010 revaluation.

### CHECK, CHALLENGE, APPEAL – DRAFT REGULATIONS

This would not come as a surprise given the contempt with which businesses have been treated in relation to the other consultation we anticipated and which has **now been launched**; relating to the details of the new 'Check, Challenge, Appeal' (CCA) process which will apply to appeals against the 2017 revaluation assessments in England. We covered the scheme in detail in our July Business Rates Update so we are limiting our comments here to matters for which decisions were outstanding and to one significant and, frankly, **quite outrageous new proposal**, which was not suggested previously in any discussion or consultation paper.

As if the CCA scheme was not sufficiently onerous to businesses, with its new obligations to provide factual data, new evidential burdens of proof on ratepayers, with new fees and risk of fines for careless errors, the draft regulations published with the consultation paper identify that an appeal against the 2017 revaluation assessment will fail unless the VO's valuation is 'outside the bounds of reasonable professional judgement'. The paper explains:

*'... assessing rateable values is inevitably a matter of professional judgement. The Government has been considering how best to ensure that decisions of the VTE recognise this and that their resources are focused on cases where there is a real issue at stake. In turn this should help appellants form a view as to the likely success of appeals.'*

*The Government therefore proposes that the VTE, in considering an appeal, should order a change in the rateable value only where their view is that the valuation is outside the bounds of reasonable professional judgement. In cases where the VTE consider the extant valuation is within the bounds of reasonable professional judgement, no change will be made to the valuation.'*

#### Reasonable professional judgement

There is no definition of what 'reasonable professional judgement' is. Nor does the consultation paper identify whether a similar provision applies elsewhere in legislation (we are not aware that it does) and there is no indication as to how the courts might be expected to apply such judgement.

Whilst the implication is that only once an appeal reaches the Valuation Tribunal will this test of reasonableness apply, the knowledge that there is such a test should a challenge reach the tribunal would clearly influence the approach taken by the Valuation Office Agency (VOA) in negotiations.

We consider this proposal to be manifestly unfair and a breach of natural justice. Businesses made abundantly clear to Government in responses to its review of business rates, that it supported the bespoke nature of rating valuations which properly reflect the characteristics of each property. The Government claimed to have recognised this when reporting on the review when it 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... The Government confirms it has no immediate plans to change the current individualised approach to valuation'*. Whilst retaining the individualised approach, the Government clearly intends to overlay this with a broad brush which will have the effect of negating the beneficial effects of bespoke valuations which have, hitherto, provided an opportunity to negotiate reduced rateable values.

We do not know how the courts would measure 'reasonable professional judgement' – would this be a 1%, 2%, 5% or 10% error, or another approach – but we are sure that challenges to this principle would be made given the amount of rates at stake. As a firm we alone have saved our clients £2.2bn from appeals against the 2010 revaluation assessments.

#### What impact might the new regulations have?

**A business with a £10m annual rates bill might reasonably expect to have been able to cut his 2017 rates assessment by around 5%, saving £500,000 pa. A 5% valuation error could well be regarded as 'within the bounds of reasonable judgement' and the new regulations could thus take £2.5m off the bottom line over the life of the 2017 revaluation.**

#### The need to respond to this consultation

But we hope that it will not come to this and that the Government will see the error and unfairness of its proposals. They did so last time the predecessor to the Department for Communities and Local Government consulted on a very similar approach. We have already brought this to their attention (good thing we did as the authors of the current proposals had no idea that it was not novel). In 2000, the Department issued a Green Paper 'Modernising Local Government Finance' which included alternative approaches to valuation including 'blunting, where properties would continue to be valued individually as at present, but changes to value on appeal would only be granted if the value moved outside a certain threshold, perhaps 5% or 10% of the original value'.

Following consultation the review group reported:

*'Consultation respondents largely saw blunting as a means of limiting ratepayers' rights to appeal, although in practice it would limit the effect of any appeals, rather than the right to make them. Wherever the blunting threshold was struck, it would mean that a ratepayer could be denied a potential refund of rates, if on appeal the rateable value was found to be too high, but within the blunting limit. It was considered unfair by virtually all those who commented'*.

Blunting is no less unfair today than it was in 2000 – arguably it would be even more unfair given the ever increasing burden of business rates.

We therefore encourage you to respond to the consultation and make your views known regarding this inequitable proposal.

#### HOW TO RESPOND TO THE CONSULTATION

Comments should be submitted to [ndr@communities.gsi.gov.uk](mailto:ndr@communities.gsi.gov.uk) by 5pm on 11 October, although we suggest you do so as soon as possible as we suspect decisions may well be reached in advance of the consultation closing. When responding, please ensure you include the words 'Business Rates Appeal Reforms' in the email subject line.

### Update on the missing details

The consultation paper and draft regulations also add detail to some of the previously undecided issues which we flagged in our [July update](#).

- a) The role for local councils** – fortunately for business ratepayers, the Government seems to have resisted the calls from local government to permit its active involvement as a party to every appeal. The consultation merely refers to a ‘modernisation’ of the role of local authorities enhancing the sharing of information between them and the VOA, including the details of challenges and appeals made against rating assessments.
- b) Material change of circumstance (MCC) appeals** – the Government does not yet seem to have understood its own regulations so far as MCC appeals are concerned. The Material Day Regulations specify the date at which the physical circumstances of the property being appealed are fixed for valuation purposes. Thus, if one is appealing because a property is suffering temporary disturbance due to, say, nearby building works, the valuation date is the date the proposal is made. In the CCA era, however, one has to first go through a Check process which can only be initiated once the disturbance commences. The VOA then has up to 12 months to conclude Check, following which the proposal can be made by which time the temporary disturbance might have concluded, in which case no effect could be given to any proposal made. You’d be forgiven for thinking this is precisely the Government’s intention; also to deny businesses the benefit of reductions due to MCC events. The appropriate amended approach in our view would to change the regulations such that the valuation date is taken as the day on which the Check is submitted, not the date of the proposal.
- c) Non-standard properties** – the consultation paper contains no further information about how ratepayers of non-standard properties will be able to engage in the Check process. We understand from meetings with the VOA that factual data is likely to have to be e-mailed to ratepayers initially, until development of the VOA’s online portal allows for more efficient communication.

- d) Participation by multi-site occupiers** – we have highlighted previously, with concern, that all the VOA’s programming to date has been designed around the singleton user wishing to engage in CCA for a single or small number of properties. This is now reflected in the draft regulations which state that:

*‘A proposal may be made –*

- (a) online, using the electronic portal provided by the Valuation Office Agency (“the VOA”) for that purpose (which is substantially in the form provided by the VOA on 1st April 2017); or*
- (b) in such other manner as may be agreed with the VO.’*

In other words, the only way that the Government is going to require the VOA to provide and receive data is through its portal, designed for the singleton user. There is a substantial and unacceptable risk that multi-site occupiers who wish to manage their own business rate responsibilities, as well as agents advising such ratepayers would need to laboriously navigate through VOA screens checking and entering data, in order to engage in the CCA process. In a world of modern digital communications, it is not rocket science to devise a process whereby systems communicate and exchange data directly. We are actively involved in devising such processes with the VOA and call on Government to ensure their success by mandating them in regulations.

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 £2.2bn in rates liabilities over the last five years.

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