LEADERS IN BUSINESS RATES

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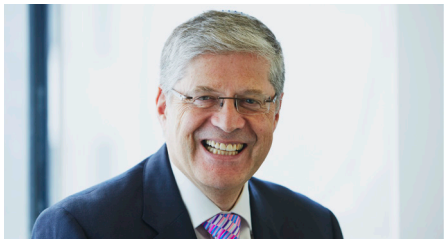
GERALD EVE'S BUSINESS RATES UPDATE
March 2017



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> **…kicking an overhaul of the entire system into the long grass.**

CHANCELLOR ESCHEWS GENUINE BUSINESS RATES REFORM PREFERRING SHORT TERM MEASURES TO PAPER OVER THE CRACKS

Given the unprecedented media coverage regarding the perceived unfairness of the business rates system and the significant hikes in bills that many will experience as a consequence of the delayed 2017 rating revaluation, one might be forgiven for expecting announcements of greater consequence than those made by the Chancellor in his Spring Budget.

He continued his predecessor's theme of directing any financial largesse towards small businesses whilst kicking an overhaul of the entire system into the long grass. He was not the only one to ride roughshod over the views of business, as the Department for Communities and Local Government has also confirmed that it will proceed, without material amendment, with its proposals for appeals reform (see our August 2016 update), including the potentially unjust provision that assessments will not be reduced unless they are shown to be unreasonable.

SPRING BUDGET MARCH 2017

The Chancellor announced three measures to provide financial support to a relatively small number of ratepayers in England facing increased rates liabilities as a consequence of the 2017 Revaluation. The Government estimates that these measures will reduce bills by £435m. Each will be delivered by local authorities utilising their powers to grant discretionary rate relief.

(1) A £1,000 business rate discount for public houses with a 2017 rateable value (RV) below £100,000.

This flat rate discount will apply for 2017/18 only and be available even if liability is decreasing following revaluation. Whereas the similar scheme in 2014/15 and 2015/16 applied to retailers and all food and drink establishments, this one seems to be targeted specifically to 'public houses', the definition of which for this purpose is awaited. The discount is subject to European State Aid 'de minimis' rules which limit an entity to receiving no more than €200,000 in aid over a rolling three year period. Pub landlords with medium to large estates may already have used much of their State Aid under the 2015/16 scheme. At least the £ equivalent today of €200,000 is around £30,000 greater than it was in 2015/16, so they might be able to claim some further discounts.

(2) Support for small businesses losing Small Business Rate Relief (SBRR)

The Government had plainly failed to realise that many businesses would lose some or all of the SBRR that they had benefitted from because their increased 2017 RV was above the threshold for this relief. They faced hugely increased bills, often of hundreds of per cent, which were omitted from the transitional relief scheme for which regulations have already been made.

The Chancellor therefore announced another scheme under which the maximum annual increase in liability for an affected small business will be £600 for each of the next five years. Whilst this will provide some welcome relief, these ratepayers will still be facing substantial increases in their bills over the five years of the 2017 revaluation.

(3) £300m provided to local authorities in England to grant discretionary rates relief

The bulk of the £435m support comes within this provision about which there is almost no detail at present. We understand that DCLG will be issuing guidance as to how the money is to be divvied up between local councils and the qualifying criteria for which the Government suggests relief should be made available.

We expect it will be directed only to ratepayers whose bills are increasing and there is likely to also be a rateable value threshold above which the fund will not be available. We will advise when further details become available.

A NOD TOWARDS WIDER REFORM – BUT WITHOUT ANY APPARENT ENTHUSIASM

The Chancellor was widely expected to launch a wider review of business rates – not that we would have welcomed another one given the considerable number that have been undertaken in recent years – but he barely acknowledged the cacophony of complaint from businesses of all sizes and sectors.

He identified that there is an issue with the differential tax treatment between online and bricks and mortar retailing but moved swiftly on without any indication that he was considering doing anything about it.

He also replayed last year's commitment to more frequent revaluations in order to reduce the volatility in bills which have been so manifest with the 2017 revaluation – the first for seven years. But rather than promise early implementation in the light of responses to a discussion paper issued last March, to which the Government has not even issued a summary of responses let alone come forward with proposals, he held out hope of recommendations in the autumn, followed by a consultation before the next revaluation in 2022. Hence our reference above to what is becoming increasingly long grass.

This is hugely disappointing and displays a total lack of ambition for real reform. We do now have formal confirmation that the next revaluation after 2017 will only be in 2022 and it is fundamental that appropriate use is made of the next five years to ensure that Government delivers on the claim it made when launching the most recent set of reviews, that it would deliver a fair tax fit for the 21st Century, incorporating simplicity, transparency and responsiveness. It has totally failed on each of these aspirations thus far.

CHECK, CHALLENGE, APPEAL – GOVERNMENT'S RESPONSE TO CONSULTATION ON DRAFT REGULATIONS

Nowhere is this failure more apparent than in relation to the planned appeals regime for the 2017 revaluation, shortly to be included in regulations. The long awaited response to last Summer's consultation on statutory implementation of the Check Challenge Appeal (CCA) approach was finally published by DCLG shortly after the Chancellor concluded his Budget speech.

Undoubtedly the most controversial aspect of the original draft regulations was the provision that would deny assessment reductions unless it could be shown that that the original assessment was 'outside the bounds of reasonable professional judgement'.

We considered this to be manifestly unfair as it would mean firms would be forced to pay artificially high rates bills even when it could be proven that assessments were excessive. Many of our clients wrote objecting strongly to the inclusion of this clause and we brought together 13 leading trade organisations and the professional rating bodies who co-signed a call for the provision to be dropped due to its arbitrariness and unjustness.

The Government has responded by clarifying that it will not impose a fixed percentage hurdle to be overcome before a reduction could be achieved – albeit it was never suggested there would be one. In response to views expressed in consultation it will replace the 'reasonable professional judgement' provision, but only with what seems to be a not dissimilar one whereby reductions would not be granted if the original valuation was 'reasonable'.

From our initial reading we fear this may be semantics but will await sight of the regulations before deciding on next steps. We will continue to seek the removal of any approach which prevents inaccurate assessments being reduced.

So far as the rest of the proposed appeals regime is concerned, the Government has as good as totally ignored the views of 83% of respondents, favouring instead the 17% of responses from local government which expressed support. We fail to see why it took DCLG nearly six months to conclude the consultation given that it clearly intended to proceed however strong the objection. We can only surmise that they deliberately left the announcement until the last possible moment so that they could steamroller the regulations through Parliament before opponents had time to take preventative action.

The full details will only be clear once the final regulations are in place, but it is clear that fees are to be imposed should one wish to appeal to the Valuation Tribunal, alongside a system of fines for supplying inaccurate information even if this was done 'carelessly' and without intent to mislead. We will advise further once the full extent of the 'obstacle course' being designed for appellants is revealed.

CHECK CHALLENGE APPEAL – THE PROCESS

What we do know is that the VOA has been developing a new digital platform for delivering the CCA process and that, if all goes to plan, there will be a public Beta website available on 1 April 2017. There has been no visibility for ratepayers and we note with significant concern that with just three weeks before it should go live the consultation response states that 'the VOA is in the process of building the digital system for ratepayers'. The relevance of it being a system 'for ratepayers' is that it has been developed for use only by those with a single or small number of properties.

We are endeavoring to agree the design of a system with the VOA suitable for use by multi-site occupiers and their advisors but without any meaningful progress having yet been made. The Government's response on CCA identifies that the VOA is aware of the differing needs of those with multiple properties and will explore how the system can best be designed to accommodate these.

In the meantime, action will be required by ratepayers themselves once the CCA portal goes live, as without a business authenticating itself to Government and proving an interest in each of its properties, it will not be able to nominate its chosen advisor to represent it for the CCA process.

Authentication Process
The system will be operated through the Government Gateway with an authentication process that must be followed by ratepayers, other interested parties and their agents, before the CCA process can proceed. Full visibility of this is awaited but we understand the following stages will need to be followed.

Registration
Ratepayers or landlords who wish to engage in CCA will need to register and authenticate themselves on the Government Gateway both as a business and authorised business representative/s.

Property identification
The business representative will then need to separately identify each of its properties in the Rating List, validating their relationship with it by uploading relevant documents such as copy rate demands or leases.

Allocate to nominated agent
Only once a ratepayer has undertaken these steps, will it will be able to nominate an agent as its advisor allowing that entity to perform remaining CCA functions in its behalf.

Clearly whilst these processes are just about manageable for a business with a handful of properties, many of our clients occupy hundreds or thousands or properties and we believe it incumbent of Government to develop a digital platform fit for purpose for such portfolios.

It goes without saying that we are hugely dissatisfied with the Government's approach to appeals, which is seemingly to implement a system so complex and unfair that businesses are dissuaded from even wanting to query their assessments – whilst at the same time designing processes that are impenetrable for most ratepayers. We regard our role as achieving the lowest possible rates liabilities lawfully available whilst at the same time removing the administrative burden of the system from our clients.
The Government wishes to frustrate those aims but we will persevere and keep you updated as matters develop.

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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