LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL
SUBMISSION FROM AVISON YOUNG

Introduction

Avison Young (formerly GVA) are one of the largest property consultancies in the UK. In Scotland, we employ a dedicated business rates team who act for a variety of clients in both the public and private sector, advising on all business rates matters. Our team comprises four professional surveyors who specialise solely in business rates. Our experience extends to some 120+ years combined in both private practice and working for local Assessors.

The Scottish Government's overall programme of Non-Domestic Rates reform, and how the Bill fits into this.

Avison Young welcomes many of the aspects of the reforms proposed, but we have some reservations where policy seeks to increase the powers of the local Assessor and at the same time, restrict the opportunities for ratepayers to ensure they are paying the required, fair and correct level of non-domestic rates.

It is our view the existing system of non-domestic rates which has been in place for several decades was generally fit for purpose and may have been better improved with minimal intervention.

Further detail is required on some aspects of the Bill.

How the Government has responded to the Barclay review, in particular on those recommendations it has rejected in full or part.

It has become clear to us that, with the Government accepting the majority of recommendations of the Barclay Review, that there is now insufficient time and research been carried out to implement them all properly.

The timing of changes is very much being driven by the next revaluation date being 1st April 2022 and all the preparation that is required in advance of that date. It is our view that some aspects of the Barclay Review could comfortably have been put in place within the timescale required whilst others should properly have been the subject of separate consultations and research over a longer time period.

Specific proposals in the Bill
Section 2 of the Bill which provides that revaluation of properties subject to non-domestic rates would be carried out every 3 years rather than every 5 years.

This section is welcome and we have no further comment to make.

Section 3 of the Bill, which (together with section 9) makes provision in relation to new or improved properties. These delay the point at which non-domestic rates are increased because a property has been expanded or improved, or at which a new build property begins to incur liability to non-domestic rates. The underlying aim is to incentivise development and investment in business properties.

The intentions of this section of the Bill are welcome, but we already note that regulations placed in 2018 and 2019 have led to problems. Such problems often lead to expensive litigation. Avison Young regularly liaise with Assessors, Billing Authorities and the Scottish Government to identify situations where the intentions of the regulations are not being met due to badly drafted regulations and differences in interpretation.

The inclusion of a 'marker' on the Valuation Roll is not, in our view, helpful to ratepayers or their advisors. It would appear the decision on the applicability of the relief will rest with Assessors? The relief application is made to the billing authority who, understandably, will initially refuse any application where the Assessor has not marked the change on the Roll. In terms of pursuing such a case for relief, what route does the ratepayer take? The Assessor or the Billing Authority?

Lastly, the inclusion of a marker on the Roll will certainly give rise to a new ‘business’ model for unscrupulous individuals and organisations, who seek to cold contact ratepayers who may not be aware of the markers significance.

Section 4, which aims to increase the degree to which parks are subject to non-domestic rates, in recognition of the commercial activities that take place in some parks (eg the running of a café).

The current regulations and case law has been sufficient to confirm what is and is not exempt from rating by virtue of being within a ‘park’. Although this has led to some property, which may appear surprisingly exempt, the regulations have been settled for some years.

This section introduces unwanted complexity and lack of clarity on what ‘commercial’ activity actually means. The number of properties affected is likely to be small, and many of them will be subject to other reliefs if they find themselves now included in the Roll (small business bonus, sports club relief etc).

The Bill in this section is unlikely to increase to any significant degree, the level of tax take on business rates, but will likely give rise to expensive, fresh litigation for the few subjects affected where other reliefs may not apply.
Section 5, intended as a measure to address a perceived “loophole” that enables owners of holiday homes to avoid both council tax and non-domestic rates by making it more difficult to enter a home on the roll (and, through this, to then claim relief under the small business bonus scheme).

The problem identified could readily have been solved by amending the small business bonus regulations. It is the existence of this relief which has been the catalyst for property changing from the Council Tax List to the Valuation Roll.

A more appropriate solution in our view, would have been to review and amend the small business bonus scheme.

Sections 6-9, which aim to reduce the current high rate of valuation appeals, which the Scottish Government perceives as speculative. (Increasing the frequency of ratings revaluations in section 2 is also seen as a component of this reform.)

The Scottish Government’s perception here is incorrect and inappropriate.

Ratepayers face a tax based on the rental value of their property. Valuation is not a precise science and as such, there is always the possibility the Assessor has not taken account of any one of many value significant factors at any property. Further, each revaluation is essentially a desk-based exercise and with the best will in the world, there are occasions where physical changes at the property or the locality are missed.

This, coupled with the limited timeframe to actually lodge an appeal gives rise to a situation where ratepayers serve ‘protective’ and not ‘speculative’ appeals.

The appeals system has been working actually very well and at a level of numbers where Assessors clearly coped.

We believe that the perception there was a problem grew during a singularly unusual circumstance (the credit crunch of 2008) when the law governing effect on value was particularly unclear. Due to appeal restrictions, ratepayers were forced to lodge protective appeals until the legal position was settled. Many tens of thousands of additional appeals were served, most of which came to nothing.

“(6) The Scottish Ministers may by regulations make provision for or about -

(d) fees payable in connection with such an appeal(including provision about circumstances in which a fee may be repaid)”

The ability to check your rating assessment should never be subject to a fee, even one that may be repaid. Although the stated aim is to reduce the number of appeals, this step effectively takes the appeal opportunity away from those with either small single properties, or indeed with large portfolios of property. For the reasons stated above regarding how valuations are prepared, any proposal (3ZA) should be free to lodge. At worst we would
envisage a fee only being paid when a proposal is exhausted and an appeal then goes on to hearing (3ZB).

Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools, and section 11 which gives the Scottish Ministers the power to issue guidance to local authorities on the appropriate way to use their powers to grant sports club relief

No comment.

Section 12, which aims to address what the Scottish Government describes as a known tax avoidance tactic concerning unoccupied or under-used properties.

We would point out that Courts have found ratepayers are fully entitled to manage their portfolio of property, within the legislative framework, in such a way to minimise business rates liability.

Section 13, which will enable councils to initiate debt recovery proceedings for unpaid rates sooner.

No comment.

Sections 14, 18, 19 and 22, which together aim to strengthen the power of assessors to obtain the information they need to carry out their role, and sections 15, 16, 17, 20, 21 and 22 which give local authorities increased powers to obtain information from ratepayers, in order to ensure that the information they have is accurate, and to reduce the risk of fraud.

Assessors are currently entitled to ask for information from the Proprietor, Tenant or Occupier (PTO) of property, in order to assist them in valuing the subjects (in line with s14(1)(a) of the Bill).

The lack of returns does not exist due to a limitation on who they can ask, but on the penalty in place for non-return. The existing criminal penalty has been to our knowledge in the last 30 years, never applied.

To tackle the problem, the Bill proposes a change to a civil penalty, administered by the Assessors (which creates its own problems), but crucially and wrongly in our view, the Bill seeks to widen the parties an Assessor can write to and make a request for information.

We feel very strongly that only the PTO should be approached for information. They are, after all, directly involved at the property to be assessed. They have an interest and one of them will be the actual ratepayer.
Giving Assessors additional powers to request information from third parties is not required. It puts an onus and possible fine on to a party with no interest in the property. Advisors will have to devote time and money to recover, collate and respond. Assessors will potentially scatter-gun requests to anyone they think might hold information.

Third parties will include lawyers, surveyors, accountants and the like — all who hold information on the basis of privilege. The Bill should (if 3rd parties are included) be clear that where information is supplied to an advisor on such terms that privilege applies in all cases.

It is our certain view that limiting the scope of requests to PTO’s should remain.

Without a doubt, once fines begin to be served for non-return from that group of three property holders, then the rate of return of forms will increase massively.

Lastly, we would point out that Assessors (and ratepayers for that matter) can, under current regulations, enlist the help of the local Committee or Lands Tribunal for recovery of information if PTO’s refuse to make a return.

Avison Young are strongly against the expansion of the scope in terms of who the Assessor can make a request for information from.

At the very worst, the Assessor should be asked to comply with, and demonstrate a hierarchy of requests before 3rd parties become involved.

S14(1)(b) should be deleted.

**Part 4 of the Bill, which give the Scottish Ministers the power to make anti-avoidance regulations to prevent ratepayers gaining an advantage from avoidance arrangements that are considered artificial, and sets out definitions of “advantage” and “artificial”.**

We would re-iterate that the Courts have found that arranging your property affairs (within the law) in such a way to minimise liability for business rates is appropriate and acceptable.

The broad intention to capture ‘artificial’ behaviours to gain ‘advantage’ sets a dangerous legislative precedent and will certainly give rise to a fresh slew of litigation.

The Bill needs to carefully define what constitutes ‘avoidance’.

It is our view Part 4 of the Bill should be removed in its entirety.

**Do you have any other comments about the Bill? In particular, is there anything not in the Bill concerning non-domestic rates that should be in the Bill?**
Generally, the Bill is trying to capture too much at once, and that is before any secondary regulations and the reform of the appeals system is considered.

It is our view that the rating system as it stands is not broken and has (with limited exceptions) not been widely criticised.