Eric Young & Co are the letting agents and advisors for 34 Scottish shopping centres and/or retail and leisure parks. This covers in excess of 10m sqft of retail space. We are the largest specialist retail agency in Scotland and we also offer advice on rent reviews, asset management, development, investment and of course, non-domestic rates. I am a Partner in the business and am responsible for the provision of non-domestic rates advice to numerous institutional landlords including the owners or asset managers of multiple Scottish shopping centres. I have set out my response below.

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.

It is accepted that a 3 yearly revaluation will reflect market conditions more timeously and thus, a 3 year cycle is to be welcomed. However, to ensure fairness for the ratepayer I emphasise the need for local government to adequately resource the extra burdens inevitably placed on the assessors departments. If not, it is our experience that ratepayers may suffer through inaccurate and excessive valuations, which may arise as a consequence of the lack of resource within Assessors.

I would also highlight that, with the English revaluation brought forward to 2021, the preference would have been for a simultaneous revaluation in Scotland. However, having previously adopted 2022 as our revaluation year and a 3 year revaluation cycle, our clients would not want any future delays in an attempt to synchronise with the 5 year cycle in England in the future.

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.

As it stands, individual council interpretations of The Non-Domestic Rates (New and Improved Properties) (Scotland) Regulations 2018 mean that the business growth accelerator is not always satisfying its simplistic aim of offering reliefs for new and improved properties. The intent of the wording in section (3) seems to create clarity in identifying the new or improved subjects, which should assist with any claims for relief. The intent of Section (3) of the bill is therefore welcomed. However, processes need to be put in place amongst the local authorities to provide consistency for ratepayers, to ensure that claims for relief are treated equitably. Further engagement with the private and public sector stakeholders should be undertaken immediately to ensure the legislation
is achieving its desired aims. I would add that, generally speaking the legislation surrounding new and improved properties is complex and a general review of all aspects should be conducted.

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 (e.g. the running of a café).

No comments

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).

No Comments

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.)

Section 6

I am uncomfortable with the Scottish Governments long held perception that a high volume of appeals are ‘speculative’. The fundamental reason that larger number of appeals are lodged is that, unlike England, there is a relatively narrow time limit within which an appeal can be lodged and the Assessor will typically not provide supporting information for their valuation in the initial period of the revaluation. Instead this may be provided only during detailed appeal discussions. Appeals are therefore lodged to protect a ratepayer’s position and permit further enquiries to be made.

To assist in the reduction of appeals, it would greatly assist if more accessible and detailed information was provided by the Assessor, perhaps through the Scottish Assessors Association (SAA) portal. This could include the provision of comparable data and supporting valuation information. This would of course be subject to normal data sensitivity. Also, if this information was provided at an earlier point, in advance of the revaluation effective date, ratepayers will be afforded greater opportunity to assess the merits or otherwise of challenging rateable values.

Section 7

This section addresses the new proposal and appeal framework. I would comment that if the Scottish Government is serious about reducing the volume of challenges to the proposed rateable values, whether through the proposal or appeal framework, additional information must be provided to ratepayers. Also, ratepayers must be allowed adequate time to digest and consider this information. There are comparatively few specialist rates advisors and the current time limits simply do not permit the required time to collate evidence and provide detailed advice.

Whilst the principal of the two stage, proposal and appeal process is acceptable, the success of this will very much depend on the timetable within which ratepayers must deal with any proposals and the information required to be provided by the Assessor.
Currently, ratepayers are afforded only 6 months from the date of confirmation of the rateable value to lodge an appeal. This 6 month period would be inadequate to lodge and dispose of any ‘proposal’. I suggest that a minimum 12 month period is permitted to address the proposal stage, with the rateable values confirmed to ratepayers at least by the end of September in the year preceding the revaluation.

Section 8

No comments

Section 9

No comments

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 comments

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

It is noted from the Financial Memorandum issued alongside this bill that the estimated increased cost to ratepayers of the measures within the bill is £67.7m inside the next 5 years. The memorandum stipulates that this is anticipated to come from higher non domestic rates bills and new penalties. This is a deeply troubling statistic particularly in the retail sector which has well documented issues affecting the profitability of many major employers.

It is concerning that the Scottish Government continue to target increased rates revenue from ratepayers who are simply managing their portfolio on the most efficient commercial basis. There appears to be a perception amongst government and local authorities that ratepayers are able to provide a never-ending source of rates revenue.

This section clearly targets landlords who often have no alternative occupation options. It is patently obvious that long term structural changes in the property sector have resulted in many long term empty properties. The measures described in this section will, I believe, lead to demolition of some rateable assessments, to the detriment of some town centres within which they are located.

The Scottish Government need to urgently engage with the largest property owners to discuss realistic solutions to the ever increasing burden of non-domestic rates. In the last 10 years, property owners have had to contend with increased long term vacancies, the significant reduction in empty property relief and the ever increasing rate £ age. There are no proposed measures to alleviate
the burden of rates on long term void properties, which are a consequence of structural and long term changes in the property market.

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

No comments

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.

Assessor Information Notices
Whilst it is accepted that Assessors often face challenges securing the necessary information to complete their valuations, the proposed powers within the bill go too far.

Parties with no legal interest in a rateable entry, should not be compelled to allocate time and resource to the provision of detailed information. For example, Eric Young & Co are the letting agents for 34 shopping centres and/or retail parks in Scotland. We completed several hundred letting transactions in 2018. If obligated to provide detailed information for even a fraction of these letting transactions, it would have significant commercial implications for our business. The same issue would arise for other surveyor firms who conduct lettings, offer lease advice, oversee building projects or are managing agents for large property owners. The powers suggested by the bill should be implemented BUT only in relation to the proprietor, tenant or occupier of the property.

By reference to rateable value, the bulk categories of properties are approximately retail 22%, office 15% and industry & petrochemical 19%. In most instances the proprietor, tenant and occupier of these bulk categories should be able to provide the necessary information. These new penalties, when directed at those parties, will address the vast majority of instances where Assessors cite the absence of information as impacting on their abilities to carry out an accurate valuation.

It may be suggested that for specialist categories, other parties retain the required information (such as building contractors or an outsourced management company) but these are in the significant minority of examples and when faced with the penalties suggested, the proprietor, tenant or occupier must be able to ensure compliance with these requests and it is they who should be pursued.

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”.

No comments
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?

The Scottish ‘material change of circumstances’ provisions have evolved in such a manner that, in practice a Scottish ratepayer has far less flexibility to challenge a rateable value through a material change of circumstance appeal, in comparison to a property subject to the same change of circumstances in England. This is patently unfair and something which our UK clients find frustrating. In my opinion the Scottish Government need to engage with the private practice rating agents to ensure parity with the English rating system on this point. The current interpretation of MCC legislation and case law makes it extremely difficult for rateable values to respond to local changes, when those changes can have a very significant and immediate impact on a ratepayer’s property.