LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM CHARITY LAW ASSOCIATION

The Charity Law Association (CLA) is a professional body for lawyers and other professional advisors to the sector, and for academics working in the area of charity law, with over 1,000 members throughout the UK. It is concerned with all aspects of the law relating to charities.

The CLA response to this call for views has been compiled by Gavin McEwan on behalf of the CLA Standing Tax Committee. The Standing Tax Committee was established in 2007 to act as a standing committee that would be available on a continuing basis to represent the CLA on any tax matters concerning charities, their trustees and staff, and their supporters.

The members of the CLA Standing Tax Committee are:

- Paul Bater, The Wellcome Trust (Chair)
- Harriet Brown, 15 Old Square
- Neasa Coen, Withers Worldwide
- Trevor James
- Elizabeth Jones, Farrer & Co
- Gavin McEwan, Turcan Connell
- Sylvie Nunn, Wrigleys
- Robert Pearce QC, Radcliffe Chambers
- Alana Petraske, Withers Worldwide
- Julian Smith, Farrer & Co

The contributors to this response serve in a personal capacity and the views expressed in this submission should not be taken to be the formal opinion of the organisations that they represent. Similarly, the views in this submission should not be seen as constituting the opinion of CLA members as a whole.

In our response which follows, we have focused our comments in particular on the question of tax relief for charities.

Specific proposals in the Bill

8. 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.
Section 10

The key principle underpinning the tax treatment of charities is that charities should be treated equally by tax legislation. Restricting tax reliefs to certain types of charities is likely to have an adverse effect on charities and their ability to contribute to the UK’s civic life. It may also see a decline in the strength and size of the charity sector and its ability to make positive contributions across public life.

This key principle has been long established. A report of the Pritchard Committee on the Rating of Charities and Kindred Bodies in 1959 stated that it would require a strong argument to deny one group of charities relief, while all other charities would be treated more favourably.

The CLA tax committees and working parties have consistently expressed views on the difficulty we perceive in limiting reliefs to certain types of charity. Our view is that charity tax reliefs recognise the public benefit provided by charity and the desirability of encouraging the work of the charity sector.

The long history of charity tax reliefs spanning over two centuries demonstrates a consistently applied principle that such reliefs should be available to organisations that qualify as charitable in order to pursue their charitable mission and subsequent reviews of charity taxation have concluded that it remains desirable for charities to continue to receive tax reliefs and to be treated equally for the purposes of tax legislation.

While our stated remit as the Standing Tax Committee of the CLA does not extend to campaigning for fundamental changes in government policy on charity taxation, nevertheless the departure by the Scottish Government from the consistent treatment of all charities equally by denying relief to mainstream independent schools is in our view regrettable. We believe that this may prove short sighted and ultimately detrimental if it hinders the benefit which the independent school sector is capable of delivering for the public good.

There is a danger that, in distinguishing between one type of charity and another, decisions on which charities can and cannot obtain rating relief begin to look arbitrary. The risk is that successive administrations may attempt to apply their own (political) views to a sector which ought to be apolitical.

We are aware of the views expressed by the Office of the Scottish Charity Regulator (OSCR) in its 17 September 2018 consultation response on the implementation of the Barclay Review. OSCR expressed its view that the Scottish Government’s proposals,
“might result in a devaluing of the charity status of certain groups of charities. Allowing the creation of a ‘two-tier’ charity sector within a ‘single-tier’ regulatory regime could be damaging to the public’s trust and confidence in both the sector and charity law.”

We support OSCR’s view. Given the potential significance of the risks identified, we do not support the singling out of one kind of charity for the refusal of relief which section 10 of the Bill would introduce.

Section 11

In relation to the power to remit or reduce rates for certain organisations, many of which will operate within the wider third sector even if not registered as charities, we support in general terms the intention of the Scottish Government to issue guidance on the granting of discretionary relief, and which can be used by local authorities in order to influence the exercise of their discretion. We support the proposal that any such guidance should be formulated with the fullest possible engagement with the community sport sector.