LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM BNP PARIBAS REAL ESTATE

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

We believe the Bill is a crucial step towards the programme of reform of the Non-domestic rates system. In the main the Bill can deliver on the objectives as set out in the Policy Memorandum but we would suggest that there are a number of specific issues which require tackling and/or require more detail and we have provided our views on these throughout this response.

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

In our view the Scottish Government has responded positively to the recommendations of the Barclay review. Most recommendations were accepted with some exceptions that we will refer to. The Finance Secretary also went further than the recommendations of the business growth accelerator with a view to supporting economic growth through development.

However, we would urge the Government to reconsider their position on the Large Business Supplement, which is currently twice the level of the supplement in England. This puts Scotland at a competitive disadvantage and I would urge the Scottish Government to implement the suggestion by Barclay to match the supplement level in England.

Specific proposals in the Bill

The Committee welcomes views on:

3. 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.

We welcome and strongly support this measure. It is vital that RV’s are regularly updated to reflect current market conditions as closely as possible. Whilst 3 yearly cycles are a positive change, it would be preferable if the revaluation cycle could match the cycle in England as it has done during recent times.

4. 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 details of this Section will largely fall to detailed Regulations. It is important that these details cater for not just new buildings but the more difficult issue of ‘improved’ properties. Issues which will require detailed consideration include:

- Extent and definition of improvement that is eligible for relief
- Treatment of land for the purposes of the relief
- Ability for ratepayers to challenge Assessors on new build or improvements.
- Ability for ratepayers to challenge Local Authority decisions in respect of BGA Relief applications

The Regulations must be clear on how they define the extent of improvements to properties for the purposes of relief. In our view the policy principle must be to encourage re-investment in properties to improve their value, occupation and economic impact.

We understand that the regulations need to incorporate exclusions in order to guard against abuse of the relief scheme. However, the wording has to be carefully drafted in order to ensure that genuine cases are able to receive the relief. For example, the current regulations appear to exclude situations where a merger of 2 properties has taken place and I can understand the thinking behind this. However, this could, potentially, exclude a situation where 2 (or more) derelict buildings have been brought back to use and then merged to form a new usable space. BGA Relief was surely intended to encourage this type of redevelopment but, depending on interpretation, this situation could be excluded from receiving relief.

5. 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).

We believe the valuation roll should be as complete as possible and, therefore, these properties ought to be included. However, further clarification is required in order to define “commercial activity”.

6. 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).

Our view it is that everyone should make their appropriate contribution to either business rates or council tax. Like other measures in this bill, the policy intention of this proposal is appropriate, but the current provisions could create inconsistencies, and negatively impact on “genuine” owners of properties for holiday-lets that struggle to meet the required 70 days.
An alternate approach to tackling this loophole would be to review the Small Business Bonus Scheme (SBBS); specifically, the appropriateness of some properties and enterprises to be eligible for the relief.

7. 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 increase in the frequency of Revaluations and the closer relationship to the Tone date should help to reduce the number of Rating Appeals. This is because the Rating assessments would be more in line with their respective commercial property rental value markets. We believe that the phrase ‘speculative’ is unfortunate as ratepayers and their representatives are often facing timescales and complexities that force them to be protective in their approaches to lodging Rating Appeals. If your Appeal is not lodged then no matter the facts of the case, you will not be able to correct your assessment until the next Revaluation.

If the Assessor was able to provide additional information in support of his valuation, at the outset, then the ratepayer would have a greater knowledge of how the valuation was arrived at and may be less likely to submit a protective appeal.

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.

We have no comments on these proposals.

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

Where regulations are intentionally misused for the purpose of avoiding rates then we have no issue with those regulations being tightened. However, where there is misunderstanding or genuine error, we would hope the Billing Authority will be pragmatic and show discretion.

We would suggest that the Bill should oblige the Government to hold information and/or data on all reliefs, which should be made publicly available. This would improve transparency of the system and Government policy-making – which ties in with the primary objectives of this Bill – and hold the Minister to account on reliefs s/he introduces.
10. Section 13, which will enable councils to initiate debt recovery proceedings for unpaid rates sooner.

Again, we recognise it is important that ratepayers meet their obligations, but the Billing Authority should implement these new powers with responsibility and discretion.

In relation to Section 13, 4(A)(aa) iii, we believe that the “period of 14 days beginning with the day on which that amount became payable has expired” is too short. 35 days is more appropriate; with room for extension in exceptional circumstances.

11. 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.

We agree that there must be better sharing of information and transparency between ratepayers, their representatives and the Assessors. However, the Assessors already have reasonable power to request information and, at present, it works reasonably well.

However, we believe Assessors should be entitled to more information; but further discussion around who can make requests, and how much information the Assessor is entitled to, is required.

Similarly, for efficiency, the Committee may wish to consider the legal implications and effects on ratepayers of broadening the pool of those who can provide information. It would be of great concern if the Bill allowed penalties to be brought against third parties such as surveyors, architects, lawyers who may not have the information or may not have permission to provide the information. It would also be unfair to ask these unconnected parties to devote time and resource to this task.

12. 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”.

The definitions laid out under Part 4 of the Bill are very broad and, potentially, highly subjective. We are unsure how the concept of a GAAR will work in practice for the NDR system. A GAAR has been introduced but in other devolved Scottish taxes but not yet used, so at this stage we would argue that the concept is unproven even with established devolved taxes.

This Part of the Bill should however be able to act as a basis for the more efficient management of ‘avoidance schemes’ that may not yet be operation but may need to
be responded to in the future. For example, this Bill is taking steps to legislate in relation to second homes/small business bonus schemes and the periods of occupancy before empty property rates relief may be triggered - if passed then Part 4 of this Bill should offer a quicker and more efficient means to address these concerns through the provisions of the GAAR.

Not all practices are illegal and rating professionals should be allowed to advise clients on this. As such, this Bill needs to make clearly define what constitutes “avoidance”.

13. 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?

1. Material Change of Circumstance

At present, the legislation around what constitutes a ‘Material Change of Circumstances (MCCs) is indistinct, which has, at times, lead to confusion for ratepayers and professional advisors.

We appreciate this is a complex arena – especially when considering the application of case law which contributes to the variations in existing use of the term.

This is not a criticism of any participant in the sector, but we believe that the definition of “Material Change of Circumstances” in Section 37 (1) the Local Government (Scotland) Act 1975 should be reviewed if the rating system is to regain the confidence of the public and expert practitioners.

2. Valuation Timetable (Order) 1995

This Order prescribes the timetable for—

(a) certain things which require to be done in connection with the making up of a valuation roll at the time of revaluation; and
(b) applications for redress to the assessor, the lodging of appeals and complaints with the valuation appeal committee, and the disposal of appeals and complaints by the valuation appeal committee

The problem with the current wording of the Order is that it states that 15 March is the last date for delivering the roll to the rating authority. This means that the Valuation Roll in each local authority area can be made up on a different date from another depending on when the Assessor for that area delivers it to the rating authority.

Valuations are “made” on the basis of the level of rents prevailing 2 years before the Revaluation date and on the basis of physical circumstances on the 1st January in the year preceding the Revaluation
The need for flexibility over the date the Valuation Roll is delivered to the Rating Authority is obvious but due to its interaction with the wording of the current Section 3(4) of the Local Government (Scotland) Act 1975 in relation to when a Material Change of Circumstance can be effective i.e. “since the entry was made”, it can produce obscure results in terms of the integrity and consistency of Valuation for Rating across Scotland. This is because an appeal on ground of MCC can only be lodged since the entry was made which in the year of Revaluation, the Lands Valuation Appeal Court have opined, is the date the roll is delivered to the rating authority as per the Timetable Order. The phrase since the entry was made appears to be carried forward in relation to proposal under the new Section 3ZB (2)(c), therefore the same obscure results could happen in future revaluations if the wording is not amended.

For example, if the Assessor for Fife delivers the roll to the Rating authority on 13 March in a year of revaluation, and an MCC occurs on the 14 March, then the ratepayers in Fife could appeal on the grounds that an MCC had occurred since the entries were made.

However, if the Lothian Assessor waits to the last date for delivering the roll i.e. 15 March, as prescribed by the Valuation Timetable (Order), then a ratepayer in Edinburgh cannot appeal on the basis of the same “MCC” because in Edinburgh the roll wasn’t “made up” on that date, and thus the MCC occurred before the entries were made.

This creates inconsistency within the Scottish Rating framework as it benefits one ratepayer against another for no other reason than one Assessor having finalised the drafting of their Valuation Roll before another. This cannot have been an intended consequence of the changes to the Valuation Timetable Order over the years and defeats the bills aim for increased fairness and a level playing field amongst ratepayers.

The solution in our opinion is to change the wording in Part 7 (4) of the bill to change the newly proposed Section 3ZA (2) (c) of the 1975 Act to read

(c) on the ground that, since the entry valuation was made, there has been a material change of circumstances

We believe that both these recommendations are in line with the Bill's objectives to reflect changing marketplaces, improve ratepayers' experience and administration of the rating system, and increase fairness and ensuring a level playing field amongst ratepayers.