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

SUBMISSION FROM BDB PITMANS LLP

Thank you for the opportunity to submit views on the Non-Domestic Rates (Scotland) Bill (the Bill). This response is made by BDB Pitmans LLP and relates to the Bill as it affects charities, in Scotland and potentially elsewhere, in particular the impact of section 10 of the Bill.

About BDB Pitmans LLP

We have a long-established English law charities practice, which incorporates our Education team, advising charities across the spectrum, whether large or small, operating locally, nationally or internationally. We advise across all aspects of establishing and running a charity, including on the ownership and occupation of property. We also liaise regularly with the Charity Tax Group and the Charity Law Association, including in commenting on business rates as they apply to charities.

Views on Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools

We support the proper review and reform of taxes, including business rates. We are concerned, however, about the potential impact of section 10 of the Bill, both in Scotland and more widely.

1. The policy objectives of the Bill

The policy objectives of the Bill include to “Increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures”.

This policy objective was the express basis for recommendation 24 of the Barclay review, and its acceptance by the Scottish Government. Paragraph 4.120 of the Barclay review report (August 2017) states:

“Independent (private) schools that are charities also benefit from reduced or zero rates bills, whereas council (state) schools do not qualify and generally will pay rates. This is unfair and that inequality should end by removing eligibility for charity relief from all independent schools. …”

The Barclay review’s remit prevented it from looking at wider “taxation or business policies” (paragraph 1.3 of the report). However, the (apparent) different application of rates relief is only one of many differences as between state and independent
schools. We do not believe that section 10, if implemented, would achieve the policy objective of increasing fairness and achieving a level playing field amongst ratepayers.

For example:

- In practice, we believe that the heads of state schools do not have to budget to pay rates, in the same way as the governors of independent schools (who are usually unpaid volunteers) would have to do under section 10.
- There are other differences in the way taxes apply to state schools and independent schools, in particular differences in VAT. If the aim is to "achieve a level playing field", then those differences would also need to be addressed.
- Independent schools face other financial challenges not felt by state schools, e.g. financing increases in employer pension contributions.

2. Creating a two-tier charity sector

In its response to the Scottish Government’s consultation in 2018 on implementation of the Barclay reforms, the Scottish Charity Regulator (OSCR) raised “a general concern that treating any group of charities in a differentiated way for tax or other purposes, as proposed by the Barclay Review, introduces the potential for confusion in the public mind as to what it means to be a charity”. We agree.

OSCR also noted that, while the charitable status of those charities affected by the review is not in question, “there is a sense in which the proposals might result in a devaluing of the charity status of certain groups of charities”. It went on, “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”. Again, we share OSCR’s concerns and we believe that the impact could be damaging to the public’s trust and confidence in the sector across the UK, not only in Scotland.

These concerns were voiced at the Charity Tax Group (CTG) conference in April 2019, and reported in Third Sector magazine (4 April 2019). CTG Vice-Chairman Richard Bray raised concerns that we “might be moving into a world where you refer to first and second-class charities”.

We believe that there is a real risk of charities being regarded as “deserving” or “undeserving” according to their different treatment for tax purposes, especially where particular types of charities are singled out in this way.

We are concerned that there is then a risk of politicising charities. Rather than charities being considered according to a legal test, applied by an independent, apolitical regulator, charities risk being judged according to whether they are “deserving” or
“undeserving”, as determined by the political persuasions of the Government of the day. Today it is (mainstream) independent schools, which type of charity will be next?

3. The risk of unintended consequences

In its response to the Scottish Government’s consultation in 2018 referred to above, OSCR also noted that the “potential for unintended consequences is high”. We have similar concerns.

It is already the case that the estimated cost of section 10 has risen significantly from the estimate when the Barclay review reported (an increase of 40% from £5m to £7m in the first year).

The Committee will no doubt be aware of the report by Edinburgh-based independent economic consultancy BiGGAR Economics, commissioned by the Scottish Council of Independent Schools, looking at the financial impact of the withdrawal of business rates together with other economic challenges faced by independent schools.

The concern is not only that the impact would threaten the sustainability of many of the schools affected (whereas, when recommendation 24 was taken forward, it was on the basis that it was “fair and sustainable”), but that there would be knock-on effects for the local economies and for the state. It is not clear to us that these concerns, and potential costs, have been factored in to the financial memorandum in relation to section 10.

We hope you have found these views helpful.

BDB Pitmans LLP