LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM CHARTERED INSTITUTE OF TAXATION

1 Introduction

1.1 The Chartered Institute of Taxation (CIOT) welcomes the opportunity to make a written submission in response to the call for views on the Non-Domestic Rates (Scotland) Bill (the Bill) by the Local Government and Communities Committee.

1.2 The Bill aims to deliver most of the recommendations of the Barclay Review of non-domestic rates that are considered to require primary legislation.¹ The object of the Barclay Review was to make recommendations to enhance and reform the non-domestic rates system in Scotland to better support business growth and long-term investment and reflect changing marketplaces, but to retain the same level of income to deliver local services. The CIOT submitted comments to the Barclay Review Group in 2016² and also responded to the Scottish Government’s subsequent consultation on the reform of non-domestic rates, in 2018.³

1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

1.4 Our stated objectives for the tax system include:

- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

1.5 We also think that it is important to give due regard to Adam Smith’s four principles in reforming the non-domestic rates system and implementing the Barclay Review recommendations.

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

2.1 Non-domestic rates are levied as the percentage of the estimated rental value of a property. This requires regular revaluations without which price variations lead to fluctuations in the amount of tax that needs to be paid. This in turn leads to a requirement for an efficient and transparent valuation mechanism and related appeals system. So the key requirements are certainty and transparency. The overall programme of reform and the Bill go some way to improving both of these.

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

3.1 We broadly welcome how the Scottish Government has responded to the Barclay review. By taking forward the majority of the recommendations, the Government appears to have recognised the need for a holistic approach.

3.2 Some of the key priorities in our view were to move towards more frequent valuations, to reform the appeals system and to delay rate increases for new, refurbished or expanded properties. These are covered in the Bill and help to iron out some of the unfairnesses and problems in the current system.

4 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.

4.1 We think that moving to three yearly revaluations could improve the fairness of the system, as liabilities should better reflect current rental values and in theory create a stronger correlation with a ratepayer’s ability to pay.

4.2 A firm commitment to regular revaluations on dates determined significantly in advance would also provide, in our opinion, a higher degree of certainty to business than allowing decisions as to whether to rerate or not to be deferred and the amounts of tax at stake between these two options in all likelihood to grow.

4.3 We think it is important that this change is accompanied by changes to the appeals system aimed at reducing the volume of appeals, for example such as some of the changes set out in sections 6 to 9 of the Bill.

4.4 Balancing this, it should be noted though that more frequent revaluations have the potential to reduce the stability of the system and therefore certainty. It is also likely to be more administratively burdensome for all parties. These factors should be borne in mind, to ensure that they are mitigated against, by seeking out opportunities for
efficiencies, for example. This is especially important given that businesses also have to contend with the unpredictability of rents and leases.

4.5 There is probably room for improvement in terms of ensuring ratepayers receive good, clear information concerning the reasons for the valuation decisions and rateable values for their properties. One option might be to adopt a template such that ratepayers across Scotland receive the same type of information in a similar format.

5 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.

5.1 We are pleased to note that, although relief is available for new properties for 12 months after they are first occupied, they will nevertheless be entered on the valuation roll when they come into existence. As noted in paragraph 49 of the Policy Memorandum, this will ensure integrity and transparency of the valuation roll. We pointed out in our response to the Scottish Government consultation in 2018 that the original proposal, to defer entry on the roll until occupation would present a compliance risk, especially in light of the relief being automatic, rather than application-based.4

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).

6.1 We note that the Scottish Government intend to address the loophole by imposing requirements on property owners to demonstrate that a property has actually been let for 70 days and has been available to let for 140 days through secondary legislation. The Bill provides councils with some discretion as to how they impose the criterion, such that they can allow for special circumstances in their local area.

6.2 We think it would be helpful if there was broad guidance available to local authorities as to the kinds of circumstances that might lead to the exercise of such discretion, while acknowledging that such guidance should not be viewed as a comprehensive catalogue. This would hopefully ensure a degree of consistency in approach across local authorities. It should also be made clear to property owners whether or not the onus is on them to apply for discretionary treatment and how to do so if appropriate.

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.)

7.1 In broad terms, we welcome these sections of the Bill and the objective behind them. The current appeal system is effectively risk-free for the ratepayer. We understand that around 90% of appeals are resolved by negotiation with the Assessor, and the majority result in no change for the ratepayer. Due to its risk-free nature, the current system is believed to encourage speculative and blanket appeals. This creates congestion in the appeal system, slowing the process down for those with genuine claims.

7.2 We think it is appropriate that an appeal should be able to result in the rateable value remaining the same, decreasing or increasing (as set out in new section 3ZB of the Local Government (Scotland) Act 1975, provided for by section 7 of the Bill). Not only may this serve to reduce the number of speculative appeals (and therefore relieve some of the burdens on the appeal processes), but it creates a fairer system for all involved.

7.3 There is, however, a danger that some risk-averse ratepayers with sound reasons for submitting an appeal may be put off doing so, if an appeal can result in an increase in the valuation. Clear guidance and information is therefore essential.

7.4 We note that section 7(8)(a) of the Bill provides for regulations under subsection (6)(d) to be subject to the affirmative procedure. As there is currently no power to charge fees, we think it is essential that there is provision for robust scrutiny before the introduction of fees in relation to appeals.

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

8.1 Under section 12, the ratepayer has a ‘period of 28 days beginning with the date on which the notice is given’ within which to provide an explanation of the extent of the use of the lands and the reasons for that. The wording ‘is given’ could refer to the date on the notice (assuming the notice is dated), the date it is physically sent (whether by email or by post) or the date the taxpayer receives it. The wording is therefore currently unclear. While our preference would be for the period to commence with the date of receipt of the notice by the taxpayer, the key thing is that the date of commencement of the period is clear to both parties.

8.2 The provisions in the Bill do not clarify the specific type of information that a taxpayer may provide in order to explain the extent of use of the lands and heritages in question. It would be helpful for local authorities and ratepayers to have clear guidance setting out the types of objective factors that might be taken into account, such as floor space occupied, accessibility, and business accounts. In addition, there needs to be clarity in relation to what evidence should be provided to support the explanation, or if not provided with it, retained in case of request. Otherwise, ratepayers might provide
irrelevant and superfluous information and potentially in a poor format that results in inefficiencies for both the ratepayer and the local authority.

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

9.1 We think it is appropriate that councils should be able to initiate debt recovery proceedings for unpaid rates sooner than is the case currently. They should retain the discretion to allow for extenuating circumstances.

9.2 In relation to this change, which is significant in terms of how it affects the ratepayer, it is absolutely essential that communications are made clearly and at an early stage, so that ratepayers are aware of their obligations, how to meet them and what action to take if they face difficulty in paying.

10 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.

10.1 Sections 14 and 15 provide a person to whom an information notice is given a set period within which to comply with that notice (56 days and 21 days respectively). As is the case with section 12 (see paragraph 8.1 above) the wording in the legislation reads ‘is given’. This could refer to the date on the notice (assuming the notice is dated), the date it is physically sent (whether by email or by post) or the date the person receives it. The wording is therefore currently unclear. While our preference would be for the period to commence with the date of receipt of the notice by the person, the key thing is that the date of commencement of the period is clear to both parties.

10.2 Sections 19 and 21 provides a person with the right to appeal against a penalty imposed under section 18 and 20 of the Bill respectively. They have a ‘period of 28 days beginning with the day on which the penalty notice is given’ to make the appeal. The wording ‘is given’ could refer to the date on the notice (assuming the notice is dated), the date it is physically sent (whether by email or by post) or the date the person receives it. The wording is therefore currently unclear. While our preference would be for the period to commence with the date of receipt of the notice by the person, the key thing is that the date of commencement of the period is clear to both parties.

10.3 Section 16 of the Bill imposes a duty on a ratepayer to notify changes of circumstances that might affect the chargeability to non-domestic rates and/or the amount of non-domestic rates payable. It is essential that there is clear guidance available that is easily accessible by ratepayers to explain the types of changes in
circumstances that might be relevant to chargeability or the amount of non-domestic rates payable.

10.4 We welcome the fact that the levels of the civil penalties appear to reflect the fact that their purpose is to deter the withholding of information, rather than to serve as a revenue-raising tool. This chimes with the HMRC discussion document on penalties that established that penalties should aim to encourage compliance and discourage non-compliance. Another two principles set out by HMRC are that penalties must provide a credible threat and that customers should see a consistent and standardised approach. So, there must be the operational capability and capacity to raise penalties as set out in the legislation. In light of this, we are concerned by paragraph 58 of the Financial Memorandum, where it reads: ‘It is unlikely that assessors would choose to serve a penalty in every case given the very low use made of the criminal penalty powers that they already have. Assuming assessors serve a penalty in 50% of these cases,’ Moreover at paragraph 59 of the Financial Memorandum it states: ‘A number of local authorities have reported they believe they would be very unlikely to serve a penalty to more than 5% of non-domestic ratepayers for non-provision of information’. While we believe local authorities and assessors should have the power to exercise discretion and reduce or cancel penalties in appropriate and defined circumstances, we do not think that the approach as suggested in the Financial Memorandum will encourage compliance. There is also a risk of incorrect identification of those deliberately trying to avoid their obligations as opposed to those who are simply struggling to meet their obligations. It could, over the medium to long term result in a perception of inconsistency of treatment and therefore actually discourage compliance with the non-domestic rates system as a whole.

11 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’.

11.1 We welcome the provision in the Bill for Ministers to make regulations to prevent ratepayers gaining an advantage from artificial avoidance arrangements. It is important to balance the need to protect the tax system with the need of ratepayers for certainty; ideally anti-avoidance rules should not interfere with or delay commercial decisions.

11.2 It should be taken into account that most business planning will involve considering tax consequences – so it would not be surprising for a tax advantage to be one of the main purposes of a particular planning decision. We therefore think section 25(1) of the Bill should be amended such that avoidance arrangements are framed in terms of gaining a tax advantage being ‘…the sole or main purpose...’ (rather than ‘the main

---

purpose, or one of the main purposes’) as that puts the right emphasis on the test. Gaining a tax advantage should be what the arrangement is all about if the anti-avoidance rules are to be in point. We welcome the fact that the definition of ‘artificial’ in section 26 of the Bill seeks to take into account whether or not the taxpayer has suffered real economic consequences of their actions is important, that is, whether the arrangement has economic or commercial substance.

11.3 There will need to be guidance available for ratepayers in relation to anti-avoidance rules. This should set out what is and what is not caught, and should be updated as experience of the rules grows.

11.4 The aim should also be to promote compliance and instil a culture of compliance among ratepayers. So, prompt action should be taken to tackle avoidance. If apparent abuses are ignored and ratepayers become aware of the fact, assumptions will be made that the behaviour in question is, after all, acceptable and so others will follow the route.

12 Acknowledgement of submission

12.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

13 The Chartered Institute of Taxation

13.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 18,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.