LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM BUSINESS FOR SCOTLAND

Business for Scotland welcomes the opportunity to provide comments on the Non-Domestic (Scotland) Bill to the Local Government and Communities Committee.

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

Business for Scotland supports the Scottish Government’s overall program of Non-Domestic Rates reform, having given evidence on the subject several times. Building upon the previous programme of reform including empty property relief, we feel that the Bill adds several critical elements to the non-domestic rates programme. For instance, streamlining the payment of non-domestic rates in line with that of council tax is important to encourage payment and modernise the payment process.

Business for Scotland is committed to influencing policy in line with the concerns of Scotland’s business community and encouraging change which promotes better business practices and entrepreneurship.

As such we especially welcome the following measures:

- The move from 5 year to 3 year valuation cycles, with a complementary tone date of 1 year prior to revaluation as opposed to 2. This ensures business owners will not face large increases in rates and allows long term planning;
- Removing the loophole that allows people with second homes to avoid council tax and non-domestic rates by claiming their property has moved from domestic to nondomestic rates. This will allow local authorities to benefit from much needed funding whilst encouraging payment.

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

Business for Scotland commends the speed at which the Scottish Government have responded to the Barclay Review, quickly implementing several reforms that go beyond that recommended by the Review (such as expanded Fresh Start relief). In light of the recommendations that the Scottish Government has rejected in full or part, we are largely in agreement:

1. The proposal to charge businesses based predominantly online or out-of-town, a business rates supplement. The Cabinet Secretary for Finance, Economy and Fair Work, confirmed in the Scottish Budget that the Scottish Government would not be taking forward this recommendation at this time. We support this as it encourages the development of online enterprise;
2. The current exclusion of agricultural property from the valuation roll should continue. The Barclay Review recommended that current exemptions should be replaced with a 100% relief to improve transparency. Whilst we welcome policies that improve the transparency of the rates system, we agree with the Scottish Government that redefining the current scope of exemption runs the risk of adversely affecting Scotland’s agricultural sector;

3. All properties should be entered on the valuation roll (except public infrastructure such as roads, bridges, sewers or domestic use). BfS accepts the Scottish Government’s rationale that while it would be desirable to have more information about properties currently excluded from the roll, this would result in unnecessary administrative burden on assessors who are already under strain. Especially where there is no intention to levy non-domestic rates on such properties, this would be unnecessary.

3. Section 2 of the Bill which provides that revaluation of properties subject to nondomestic rates would be carried out every 3 years rather than every 5 years.

We welcome the proposal to reduce revaluations from 3 to 5 year cycles, noting the unmanageable increase in rates many experienced after a seven year gap in the previous revaluation cycles. Carrying out revaluations every 3 years instead of 5 will better reflect the value of the property, and the supplementary proposal to move the tone date (the date at which the value is measured) from 2 years before revaluation to 1 is a positive step. This will ensure that less dramatic increases to rates occurs and will allow for more effective management of revenues year-on-year.

However, we would like to raise our concerns over the impact this will have on appeals processes.

As of December 2018, there were 43,425 outstanding appeals against the 2017 revaluation cycle which suggests the process is not being managed effectively (see Question 7). The Bill should include a mechanism by which appeals are dealt with more effectively and quickly. This echoes the concerns of the Barclay Implementation Advisory Group for the Bill.

That said, it is likely that the volume of appeals after the next revaluation will be reduced assuming that there is no repeat postponing of the date. One of the central aims of this Bill is to reduce unexpected increases or decreases in rates, which a 3 year revaluation cycle should achieve.

By this logic it would be worth investigating a Hong Kong style approach to nondomestic rates which has revalued properties annually since 1999. Hong Kong have a historically low rate of appeals. This would be desirable yet there would have to be a more in depth investigation into the resources required and the burden on assessors.

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 nondomestic 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.

We support the move to increase the exemptions provided to new and improved commercial properties. Delaying the time at which a newly improved property begins to pay an increased non-domestic rate due to improvements actively encourages investment into commercial properties, which previously may have been disincentive as a result of the increased rate being required to be paid from the offset. Delaying this by 12 months allows for the holders of the commercial property to benefit from this investment prior to paying the increased rate which will have a positive impact upon businesses. Similarly, we support providing 100% rates relief from non-domestic rates for 12 months from when new properties are first occupied - this encourages investment in new properties reducing the cost of regenerating commercial property across Scotland.

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 are in agreement with the Scottish Government and the Barclay Review that commercial activity in some parks should be rated in the same way as business elsewhere. This better reflects trends in the site of parks for cafes and other small businesses, thus it is only fair to bring such premises onto the roll. However, we in concurrence with the consultation for the Bill believe that there is still a lack of clarity over the definition of commercial activity, as this is not defined in the Bill. This risks bringing non-profit making organisations onto the valuation roll. As a result, BfS believes that an agreed definition of commercial activity should be defined in the Bill to ensure equal application across local authority areas. For instance, we suggest that a distinction should be made between enterprises who charge a fee for costs and those who charge a fee for profit. Current relief is available in the discretionary relief available for non-profits, although the level of relief available is usually low at around 25%.

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).

We consider tackling tax avoidance as a central tenet of any taxation policy. Consequently, we welcome the policy to close the existing loophole that allows some property owners to avoid both council tax and non-domestic rates by claiming the property has moved from domestic to non-domestic use.

We welcome the fact that the Bill enables a change in policy and in order for any holiday home classified as a business it must have been actually let for a minimum of 70 days in a financial year and available to let for a minimum of 140 days. This is somewhere between the Welsh and English approach, which is arguably a more efficient approach.
However, we also accept that in many cases, through no fault of the owner, it is not possible to have fulfilled these conditions. We are committed to supporting Scotland’s rural businesses who may be affected by conditions such as adverse weather preventing ferries reaching the islands. With that in mind we welcome the proposal of discretion for local authorities regarding the 70 day actual-let criteria and therefore whether or not a property should be entered or remain on the non-domestic rates roll.

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.)

We believe that reducing the rate of valuation appeals is critical to ensuring the 3 year valuation cycle is introduced effectively. Consequently, we support the inclusion of the provision to allow the Valuation Appeal Committee to increase the rateable value rather than just allow for a decrease or for the rateable value to stay the same. This should reduce the amount of speculative appeals occurring as businesses will not wish to risk an increased rate if they do not have solid grounds for believing there will be a reduction in their valuation.

Additionally, the provision to allow a fee to be charged for raising an appeal with a refund of the fee upon a successful appeal should reduce appeals while ensuring the system remains fair.

However, to further reduce the number of appeals made, better information should be provided to businesses on how their rate is calculated. Research by the Federation of Small Businesses has shown that many business owners do not understand how their valuation is calculated. If they were provided with more information, they would have a better understanding of why their valuation is a certain amount and how that amount has been calculated, which should reduce the amount of appeals.¹

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 believe that equality of opportunity is very important in achieving inclusive and sustainable economic growth. Consequently we think that the education system should strive to provide excellent schooling to all pupils regardless of their background. Current policy provides rates relief for independent schools who are registered as a charity up to 100%. However, local authority schools are not eligible for relief and generally will pay rates. We consider this to be unfair as it creates inequality in the education system. We think that the Scottish Government’s proposal to remove eligibility to claim charitable relief for non-domestic rates from mainstream independent schools is a way to eliminate this inequality.

However, BfS also agrees with the principle of the Barclay Review, that in order to eliminate the inequality of school provision charitable rates relief should be removed from all fee charging independent schools. Yet, there is a need to protect special education institutes such as schools that provide for pupils with additional needs. Therefore we support continuation of relief for independent schools of this type regardless of fee structure. In the future a discretionary rates relief system at a local authority level should be examined in more depth as a better way to localise decision making on these issues.

On Section 11, we have no comment.

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

The Barclay Review reports well-known avoidance tactics such as occupying part of an empty property for storage to qualify for another relief (charitable or small business bonus relief) thus lowering tax for the ratepayer. We consider this to be firstly unfair for compliant ratepayers and secondly damaging to the local authority revenues. With regards to that, we believe the Bill effectively addresses an obvious shortcoming of policy, given a General Anti-Avoidance Rule is already in place for Revenue Scotland in respect of devolved taxes.

It does so by empowering local authorities to take immediate action where they consider that a property is not being used or is underused by placing the onus on the ratepayer to provide evidence that demonstrates that they are in receipt of the correct rate relief. This provides the ratepayer with the opportunity to respond, within 28 days, while makes it possible for the local authority to act in case no response is received.

We consider that the underutilisation of space is a huge problem in Scotland. Removing advantageous tax avoidance loopholes may encourage property owners to utilise property more effectively or sell to someone who can make better use of the space. The anti-tax avoidance provisions of the Bill are an important pillar of the Scottish Government’s commitment to promoting a culture of responsible tax payment.

Nevertheless, we think that there should be a clear process through which ratepayers can appeal when they disagree with the local authority’s decision. This means appeal rights should be recognised for the ratepayers and a process should be developed in a clear way. Otherwise, it should be made clear that the decision of a local authority is binding. This will help preventing any ambiguity with regards to how the process works.

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

We think it is vital that councils have the appropriate funds available to carry out their activities and thus we believe that providing councils with the power to claim unpaid non-domestic rates, from businesses at the point at which a payment is missed, is a step in the right direction. Bringing the enforcement of this in line with council tax will simplify the process of collection for councils reducing the amount of resources
required. Ensuring that this approach is consistent across local authorities is of the utmost importance as any inconsistency may have a negative effect on businesses that pay non-domestic rates to a number of different local authorities.

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.

This measure has the potential to prevent the current trend of purposely withholding information, preventing assessors from making an accurate valuation of a commercial property.

The use of civil penalties should encourage rate-payers to respond to assessors requests for information within the specified timeframe of 54 days, which should reduce the number of appeals that are submitted on the basis of an incorrect valuation due to withheld information.

Even though we support the measure, we are concerned that the level of these penalties may be too low and not adequately act as a deterrent.

12. Part 4 of the Bill, which gives the Scottish Ministers the power to make antiavoidance regulations to prevent ratepayers gaining an advantage from avoidance arrangements that are considered artificial, and sets out definitions of “advantage” and “artificial”.

The tactics often used in avoidance are already well known and it is imperative to allow for the creation of regulation that will prevent the continued abuse of the system. As a result, we support the provision to allow Scottish Ministers the power to introduce anti-avoidance regulations, as this is a common issue among local authorities. We also in agreement with publicly naming those responsible for avoidance as it would act as a further deterrent as well as allowing for data sharing amongst local authorities for the tactics used as not all local authorities will have perfect knowledge.

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?

One key area we believe should be included in the Bill rates relief for newly occupied commercial properties in the High Street area of towns. Currently, Fresh Start offers 100% rate relief for 12 months on properties that have previously been in receipt of empty properties relief for a period of 6 months. It is well documented that many High Streets across Scotland are struggling, with closures a frequent occurrence. We suggest extending the Fresh Start relief to 18 months for commercial properties located on a High Street to further boost business growth across Scotland. The High Street is in crises and tens of thousands of jobs are at risk in Scotland. The key reason is the increase in competition from online sales and of the reasons retailers are not competitive is due to business rates.
It is not that the Government needs to protect retailers in particular from economic trends such as internet shopping. Creative destruction is a well know economic mantra but desolated town centres are not a clever use of town centres as economic aspects. Business rates are a pre-internet age tax and are now becoming obsolete. The Scottish Government has acted to provided increasing numbers of small business and smaller retail outlets with business rates relief. We support this approach but there is limited time before business rates becomes unsustainable and further reform is required. Whilst online retailers such as Amazon pay marginally lower rates than physical retailers with a similar UK turnover - it’s zero hours contracts, lower wages and tax avoidance are negative for the economy. Could rates be reduced and the lower taxes made up with a sales tax that would be paid by everyone?

In addition, we believe that the impact of rates on speculative building should be considered carefully. This is because speculative building in rural areas is arguably riskier, since it may take months and sometimes years for buildings to be let. This is not usually the case with speculative building in urban areas. Therefore, we propose that this should be taken into account and the rates relief for rural buildings should last longer and be deeper than those of urban buildings, to encourage speculative building in areas in which this entails higher risk.

The rates relief for urban buildings and rural buildings cannot be the same - areas where speculative builds will take months to let must be aided for a longer period. Not to do this would stop all speculative builds in areas where such investment in infrastructure is needed and concentrate it all into urban areas where it is not. This exacerbates the market failure of rural infrastructure investment.

While we support the efforts of the Scottish Government and the small changes to the nondomestic rates system being made, we believe that more needs to be done as all we are doing is buying more time before the system collapses and has to be rapidly overhauled/replaced altogether.