

Our ref: BP/Policy/HMT/Revaluations

Your ref: More frequent revaluations

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Dear Sirs,

“Business Rates: Delivering more frequent revaluations” Discussion Paper - Response

Thank you for offering the opportunity to respond to this discussion paper. This letter is my response to the questions raised in the paper.

Blake Penfold is an independent consultancy specialising in business rates advice. I have nearly 40 years’ experience as a rating consultant in private practice and have been involved with rating appeals in respect of all types of property throughout the United Kingdom and in the Irish Republic, the Channel Islands, and the Isle of Man. As well as appeals before Valuation Tribunals and the Upper Tribunal (Lands Chamber), I have been involved with appeals to the Court of Appeal and House of Lords on matters of rating law. I have also appeared before Local Valuation Appeal Committees in Scotland and as an expert witness in the High Court, at County Court, and in Magistrates’ Court proceedings in respect of business rates.

I began my career with H Brian Eve and Company (later Wilks Head & Eve) before joining Hillier Parker (now CBRE) and, most recently, headed the Business Rates team at GL Hearn for ten years. I am a former Chairman of the RICS Rating and Local Taxation Panel and represent RICS on the Valuation Tribunal for England Tribunal User Group and elsewhere, including giving evidence to the Parliamentary Scrutiny Committee on the Business Rates Supplements Bill. I am a past President of the Rating Surveyors’ Association and a former member of the Valuation Standards Board of the Royal Institution of Chartered Surveyors.

I have expertise in all aspects of business rates from legislation to liability and all types of property. I also have experience from throughout the United Kingdom and in respect of property tax systems elsewhere.

I preface my response to the questions in the discussion paper with some comments regarding the business rates system that I regard as relevant to the discussion, these comments being informed by my experience in giving advice to ratepayers.

Background comments

I consider that more frequent revaluations would be of benefit and support the concept of revaluing more frequently to keep the tax base up to date. But this will not overcome the principal flaws in the current business rates system.

Tax Rate

The current level of Uniform Business Rate (UBR) is too high. When the present system was introduced in 1990, the UBR was set at 34.8 pence – a tax rate of almost 35%. At that time Corporation Tax (full rate) was 35%, Income Tax basic rate was 25% and the higher rate was 40%. The level of UBR made sense in relation to these other taxes.

In 2016/17, the UBR is 48.4 pence with a supplement of 1.3 pence for larger properties – a tax rate of nearly 50% for larger properties. At the same time, Corporation Tax (main rate) is now 20%, Income Tax basic rate is 20% and the higher rate is 40%.

The level of UBR no longer makes sense in relation to other corporate taxes; indeed, it is clearly excessive in comparison with these taxes. All OECD and EU Commission studies that I am aware of also show that property taxes in England are much higher than property taxes in other, competing, economies. Most of these studies show that recurrent (i.e. annual) property taxes in the UK represent a higher proportion of GDP than in any other country surveyed.

Complexity

The non-domestic rates tax regime is too complex. In 1990, when the present system was introduced, there were no rates supplements and three possible rates reliefs.

Now there are four possible rates supplements and at least thirteen possible rates reliefs, as well as potential Business Improvement District (BID) rates and other levies.

The reliefs and supplements have grown in a piecemeal fashion and sometimes conflict with each other, particularly for smaller businesses. Even experienced professionals at times struggle to understand the system.

I should also add that the legislation governing the non-domestic rating system in the UK is so complex and spread over so many different Acts and Regulations that many expert lawyers find great difficulty in deciphering what they describe as “impenetrable” legislation.

Responses

I set out below my responses to the specific questions in the Discussion Paper:

Discussion points on the challenges of delivering more frequent revaluations under the current system:

- **Particular stages of the valuation process where reforms would be needed to deliver more frequent revaluations**

One area that could helpfully be reformed in order to deliver more frequent revaluations is the application of the scheme of transitional adjustments following each revaluation. For the 2017 revaluation the Valuation Office Agency (VOA) completed the valuation process by the end of May 2016, but the valuations will not be published until October 2016, a delay of six months. The reason for this delay is to allow for modelling of possible schemes of transitional adjustments by government officials and for a public consultation on the proposed schemes. If a standard scheme of transitional adjustments were developed and applied at each revaluation, the period between revaluations could be shortened by at least six months, even without other changes. However, I consider that improved digitisation of the VOA records should help deliver more frequent revaluations without significant additional cost.

If there was a move to more frequent revaluations, the need for a programme to phase in changes to tax bills may be diminished or even removed.

Another possible reform would be to remove from the business rates system all properties with low rateable values, not just those occupied by smaller businesses. Following the Budget 2016 announcements regarding small business rate relief, some 600,000 businesses will be removed from business rates liability in 2017. However, it will still be necessary for the VOA to value all of these properties because, if they are not occupied by a small business, the occupier will continue to be liable for business rates. If the number of properties within the business rates system were reduced significantly the valuation process could undoubtedly be shorter.

- **The effect of more frequent revaluations on appeals**

I have commented in my introductory remarks on the very high level of recurrent property taxes in the UK. I consider that the non-domestic property tax regime in the UK penalises unfairly businesses that are property intensive. Another effect of the very high level of local property taxes in the UK is that there is significant incentive to appeal against business rates assessments.

More frequent revaluations would reduce the incentive to appeal, because the extent of potential savings from any appeal would be reduced; for example, savings from an appeal under a system of three-yearly revaluations would, other things being equal, only be 60% of those from an appeal under a system of five-yearly revaluations. Experience from international studies indicate that systems with more frequent revaluations have far fewer appeals than is presently the case in the UK.

However, it is not possible to say with certainty that introducing more frequent revaluations would, by itself, reduce the incidence of appeals. In addition, what is needed to reduce the incentive to appeal is to ensure far greater transparency within the system for ratepayers to know how their assessment has been arrived out, the evidence on which it is based, and how their liability is calculated. At present, the VOA refuses to provide any indication of the evidence on which their valuation of the ratepayer's property has been based without that ratepayer making a formal appeal. This means that, in many cases, appeals are made simply in order to clarify the evidence that has been used by the VOA to arrive at an assessment and the proper application of that evidence to the ratepayer's property. Understanding the valuation, and being satisfied as to its correctness having regard to the evidence upon which it has been based, is particularly important to ratepayers because of the high level of tax.

Having more frequent revaluations would also improve ratepayers' understanding of their rateable value as it would be brought more in line with current market rental values. At present, ratepayers struggle to make any connection between the rateable value of their property, based on rental values in 2008, and the current rental value of their property in the very different market conditions that now prevail. This "disconnect" is extremely unhelpful to the successful understanding and operation of the system.

I consider that, over time, more frequent revaluations would result in assessments more accurately and closely reflecting current market conditions and should therefore tend to reduce the incidence of appeals, but I consider it much more significant to improve the transparency of the system to business ratepayers. It is this factor that will reduce the number of appeals, although more frequent revaluations will also help.

- **The increased risk of appeals and how this could be avoided or managed**

I am not aware of any evidence to suggest that more frequent revaluations would necessarily result in an increased number of appeals; indeed, all the evidence points in the opposite direction. However, whilst the tax rate remains high in relation to other corporate taxes and in relation to property taxes in other competing markets, and in the absence of greater openness by the VOA about the evidence upon which its valuations

have been based, there is always the likelihood of a significant number of appeals. The most certain way to reduce appeals would be to reduce the tax rate.

The most appropriate way to reduce the tax rate would be to enlarge the tax base by removing many or all of the current exemptions from non-domestic rates. A thorough review of reliefs and exemptions is long overdue and should be implemented as part of a wider review of business rates.

Another way to reduce the number of appeals would be to encourage the prior agreement of assessments. This happens in other countries which have more frequent revaluations than the UK, but relies upon greater openness and sharing of information between the parties. There is some limited prior agreement with the VOA at present, but this approach could be much more effective if the VOA fully embraced the concept. In theory, the number of appeals could also be reduced through a process of self-assessment, which I discuss below.

- **Accessing the skills to deliver more frequent revaluations**

One option would here would be to privatise, in whole or in part, the provision of non-domestic rating valuations which is something which has been done in other jurisdictions for property tax purposes, notably in parts of Australia.

However, if the desire was to continue with the system whereby valuations are undertaken by the VOA, then it would be necessary to provide the VOA with additional resources to undertake this additional work; this would include the greater use of computer assistance in the valuation process. On the assumption that it is not intended to increase the number of professional staff employed by the VOA, more of their existing resources need to be switched from dealing with appeals to carrying out revaluations. In order to achieve that objective, it is necessary to reduce significantly the number of appeals. As I have indicated above, I believe that this is possible if the business rates system were reformed to make it more transparent for taxpayers. I set out further thoughts on how this might be achieved in my response to the next discussion point.

- **How the delivery of rating valuations could be reformed to support more frequent revaluations**

I consider that the key to supporting more frequent revaluations will be to reduce the number of appeals, thus enabling the VOA to focus on carrying out revaluations rather than being “bogged down” with appeals. Whilst ratepayers may be willing to accept an element of “rough justice” in respect of assessments where there is a low tax rate, they are unlikely to do so in respect of assessments when the tax rate is as high as it is in the UK. To achieve more frequent revaluations it will therefore be necessary to satisfy ratepayers that their assessments are accurate, fair in the sense of being in line with other similar properties, and supported by evidence. This would involve making available to ratepayers, not only details of the valuations carried out by the VOA, but also the evidence on which those valuations are based.

I do not suggest that it would be necessary to make publicly available rental and other information held by the VOA, but it will be necessary to make the relevant parts of that information available to ratepayers or their professional advisers. This would include making available rental, or other, evidence on which a particular ratepayer’s assessment is based. If this information were made available to ratepayers along with the valuation prepared by the VOA based on that evidence, I consider that it would no longer be necessary for ratepayers to make “protective” appeals simply to find out the evidence on which their assessments were based. Instead, ratepayers and their advisers would only make appeals where there was some realistic basis for concluding that a particular assessment was not correct.

The VOA maintain that they are not permitted to disclose such evidence due to the provisions of the Commissioners of Revenue and Customs Act 2005 (CRCA). Legal advice indicates this stance is incorrect

and, furthermore, the VOA used to provide this evidence quite freely despite the CRCA until 2010 when they had a change of policy.

- **Collection and analysis of information to support more frequent revaluations including the role of ratepayers**

Information required to support more frequent revaluations falls principally into four classes: physical details of properties; evidence of rents; evidence of construction costs; and evidence of receipts and expenditure. Ratepayers are already under significant obligations to provide information about their properties through the planning, building control, environmental health, licencing, land registration and other regimes operated by central and local government. There are other sources of information, such as fire certification, which require information from occupiers. None of this information is used effectively, if at all, in dealing with rating assessments. In my view there should be no additional requirement imposed on ratepayers until it can be shown that existing information supplied by property owners and occupiers to “government” is being used effectively in a joined-up manner, but is in some way deficient.

It should also be understood that ratepayers would be more willing to supply information to the VOA if, in turn, the VOA was prepared to share the information they already hold. In other jurisdictions, e.g. in Canada, there is a greater awareness of the mutual benefits of information exchange; this leads to improved valuation accuracy and fewer appeals.

Discussion points on a self-assessment system for business rates in England:

- **The potential compliance regime under self-assessment**

It would seem inevitable that compliance would be the responsibility of the VOA if ratepayers were allowed to self-assess. As rental and other evidence on the scale that the VOA has would not be available to ratepayers when preparing their valuations, the test would become one of whether the assessment entered by the ratepayer is one that a reasonable person could have arrived at and is it in line with the assessments of other similar properties in the locality?

Such a system would need to recognise the substantial additional burden imposed upon ratepayers by the need to carry out self-assessment which is likely to include the cost of engaging a private sector valuer to carry out the valuation. There is a real risk that so-called “cowboy” operators would seek to exploit the opportunity to take an upfront fee and either not provide a valuation at all or provide one with little if any professional credibility. If this transpired, the cost of the compliance regime would be considerably increased. Another issue that needs to be considered in connection with self-assessment is “rating list maintenance”. At present, the VOA, supported by information supplied by billing authorities, is required to keep the rating list up to date with any required changes such as new buildings, extensions, alterations, changes of use, demolitions, etc. A move to self-assessment would need to ensure that not only the original valuations provided by ratepayers were acceptable, but also that they provided revised valuations whenever there was a change to their property. This would considerably increase the scope and cost of self-assessment and compliance.

- **The publishing of rental information by the VOA to assist ratepayers when they self-assess**

Any form of self-assessment would inevitably impose a significant additional burden on businesses. Whilst larger businesses might be better equipped than smaller ones to comply with the requirements of self-assessment, it must be recognised that there would be a major burden on all businesses. I consider that, for self-assessment to work with any tolerable degree of accuracy and certainty, it would be necessary for the VOA to publish all the available rental information it holds to assist ratepayers with the burden of compliance.

It would be ironic if, for the purposes of self-assessment, the VOA were required to publish the information that, at present, they refuse to make available to support their own valuations under the current system.

- **The publication of rateable values of all properties under a self-assessment system**

The essential characteristic of a self-assessment system would not be one of comparability, as with the present system, but one of compliance. It would therefore not be necessary to publish rateable values of any properties under self-assessment. Indeed, to do so would merely invite a “race to the bottom” between ratepayers as each would use another’s self-assessment to justify a lower figure. The essence of self-assessment would be a level at which the ratepayer would privately accept represented a reasonable measure of the value of its occupation or occupations. Because of this, any publication of figures would represent a breach of commercial confidentiality and would be unacceptable.

- **The role for ratepayers**

As I have commented above, a system of self-assessment would represent a significant additional burden of administration and compliance for all ratepayers. It would also involve a complete change of mind-set for all ratepayers from one whereby they considered the assessment or assessments presented to them and took action accordingly, to one where they themselves were responsible for assessing a reasonable expectation of the value of their occupation and for dealing with any compliance issues raised by the VOA.

The essentially private nature of self-assessment would preclude any real reference to comparability of values and would be likely to exclude also direct comparability between the units of assessment adopted by one ratepayer with that adopted by another. For example, one ratepayer might consider, perfectly reasonably, that an internal part of its property, operated by a concessionaire, represented a separate hereditament and require that concessionaire to self-assess accordingly, whereas another ratepayer might, equally reasonably, consider that its own internal concession was part of its own hereditament and would self-assess its property accordingly. Inconsistency is bound to increase under a self-assessment system. So there would not only need to be a major change of mind-set for ratepayers but also for government.

- **Specific issues relating to smaller businesses or other ratepayers for whom self-assessment could be particularly challenging**

A system of self-assessment for a tax as individual, and as financially significant, as business rates would effectively require all ratepayers either to devote internal resource to compliance, or to seek external advice to do this. Whilst many ratepayers already seek advice in respect of their assessments, many do not. So what is presently a task undertaken by some ratepayers would become a task for all. The extent of the task would alter from one of reviewing assessments to one of creating them and for smaller businesses this would be likely to require engaging external advice. As I have already indicated, there is a real risk of ratepayers being misled by unscrupulous operators and/or receiving unreliable advice which would not only adversely impact on them, but may also impact on the predictability, stability and reliability of the revenue generated by the system.

Discussion points on a formula approach to business rates in England:

- **The associated move away from a link to market values**

If the tax were at a relatively modest level, by comparison with other corporate taxes and by comparison with property taxes in other competing economies, the move away from a link to market values might be

acceptable. However, whilst the tax remains at its present, very high, level I consider that a move away from market values for each property is not acceptable.

Taxpayers may be prepared to accept a degree of “rough justice” associated with a formula basis where the tax is at a modest level, but will not be prepared to accept it when the tax is at such a high level. I am aware that in Guernsey there is a formula basis of assessment, based on cadastral survey data (under the Taxation of Real Property (Guernsey and Alderney) Ordinance 2007) but the level of tax in Guernsey is only at a fraction of the level of the tax in England and, so far as I am aware, no property tax is levied at all in Alderney.

Quite simply, a formula approach is not acceptable for a tax being levied at the current high level.

- **Classes of property that would be suitable for a formula approach**

None, whilst the tax remains at its present level.

It may be recalled that a “formula” approach used to be used for the “prescribed industries” (gas, water, electricity, etc.) many years ago. This was abolished as it was recognised to be unfair and no reliability could be placed on its outcomes.

- **The factors that would need to be included in the formula beyond class of the property, size of the property and location**

To achieve any acceptable degree of fairness required for a tax at this level it would be necessary to include such a wide range of factors as to render a formula basis inoperable.

- **The balance of efficiency simplicity and certainty that a formula approach would provide against any desire to retain valuations that take greater account of the individual characteristics of properties**

For the reasons I have already set out, I consider that a formula basis of assessment is unacceptable with the current structure of the tax. In this respect I note that, at paragraph 1.12 of the Interim Findings of the Business Rates Administration Review, published in December 2014, HM Treasury and DCLG commented as follows:

“Ratepayers have sent a clear message to the government that they support an individualised approach to valuation. They want to continue receiving an individual valuation for their property, on which their business rates bill is based. Ratepayers would not support a move away from this towards more ‘broad brush’ approaches such as those considered in the discussion document (e.g. ‘banding’ or ‘zoning’). Therefore, the government confirms it has no immediate plans to change the current individualised approach to valuation.”

I can see no reason to depart from the approach set out in the Interim Findings paper.

- **The implications for businesses of different sizes**

I consider that, irrespective of the size of business concerned, a formula approach to a tax levied at the current, very high, level of business rates in England is unacceptable.

I will be happy to meet with your officials to clarify or amplify any of the above responses to the discussion points if that will be helpful. I have no objection to this response being made public.

Yours faithfully

A handwritten signature in black ink that reads "Blake Penfold". The signature is written in a cursive style with a large, stylized initial 'B'.

Blake Penfold

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