

Tuesday, 11 October 2016

Check, challenge, appeal: Reforming business rates appeals - consultation on statutory implementation

Reform to the business rates system must address head on the need to reduce the burden of a tax that discourages investment in jobs and growth. The national business rates multiplier needs to be frozen, and then reduced to encourage growth.

We share the ambition to reduce appeals with central and local governments. Last year when responding to the original Check, Challenge and Appeal consultation the British Retail Consortium recommended more frequent revaluations every three years combined with a better working relationship and exchange of information between ratepayers and the Valuation Office Agency (VOA) which would drastically reduce the number of appeals.

Since then there has been a Government commitment to more frequent revaluations though without a timescale and unfortunately little meaningful progress on VOA information and rental evidence being shared upfront. The VOA has promised a 'transformation programme', but details are scarce. Given the new hurdles for businesses such as a requirement to submit an alternative valuation without VOA rental evidence being shared the number of appeals will be dramatically reduced. Creating an unfair system is not the approach that should be used to achieve fewer appeals, and is why we oppose additional hurdles such as fees.

Given the huge and growing burden of business rates it is absolutely essential each ratepayer pay its fair share – no more, no less. Most concerning of all is now the suggestion that despite an inaccurate valuation the Valuation Tribunal for England (VTE) would be instructed to only order a change in valuation and corresponding liability if it is "outside the bounds of reasonable professional judgement".

The BRC fears if the 'reasonable professional judgement' clause proceeds this may in fact have the opposite desired effect by increasing uncertainty. Appeals in the short term would be reduced, but it would almost undoubtedly lead to court challenges and if overturned would open a floodgate to appeals creating added uncertainty.

It is imperative Government:

- Switch to CPI in 2017, remove indexation in 2020
- Implement fair and predictable transitional arrangements
- Implement more frequent revaluations from 2020
- Ensure a fair appeals system taking account of a property's Rateable Value (RV)

In England, the retail industry currently contributes £7.3 billion of business rates annually – nearly one-quarter of all receipts – far more than any other industry. We look forward to continuing to work with government to achieve a long-term sustainable system.

Response to consultation questions:

Q1. Do you agree that the draft Regulations put in practice the agreed policy intention as set out in the Government policy statement?

No, the Government's policy statement did not make reference to the proposed VTE "outside the bounds of reasonable professional judgement" criteria. This proposed clause contradicts the fundamental principle that each hereditament is responsible for business rates based on its individual and independent RV. It is unfair to require businesses pay more in rates based on an inaccurate property valuation. This appears to be an effort to introduce 'blunting' through the backdoor which has not been consulted on as part of the CCA reforms or the wider structural reform. A similar approach was considered and ultimately rejected in 2000 after the same concerns outlined here were shared.

Q2. We would welcome your views on the approach to implementing fees for the appeal stage.

The substantial amount already levied on businesses should be more than sufficient to result in an efficient and well-resourced appeals system. We recognise fees will only be applied for the third and final Appeal stage and that upon a successful appeal, ratepayers would be reimbursed in full. However, fees will not lead to a more efficient system.

At the very least the standard £500 penalty should be reduced to £200 for hereditaments below £51k RV as it has been for small businesses (to be defined). By using the £51k threshold opposed to a new definition of small business would result in a fairer, more coherent system.

A speedy and robust appeals process is needed which will require a change in the VOA's attitude and approach. Given the fact Appeals will only be successful if VOA valuations are considered to be "outside the bounds of reasonable professional judgement" this may become incredibly rare. Fairness is an important principle which requires each hereditament be taxed based on its individual valuation. Any move to banding or 'close enough' mentality is inappropriate. The UK's business rates burden is higher than anywhere else in Europe or the OECD – businesses cannot afford to pay more than their fair share. This will have a hugely detrimental impact on jobs and investment.

Q3. We would welcome your views on the approach to implementing penalties for false information.

We suggest clear guidance be shared with ratepayers on the definitions and implications for 'carelessly, recklessly and knowingly' sharing false information. We acknowledge the importance of factual information being shared by ratepayers and therefore with clear guidance could potentially support penalties for 'knowingly' or 'recklessly' providing false information. However, it is difficult to determine how 'carelessly' should be interpreted. This measure may have been well intentioned in trying to curtail the activities of rogue or unprofessional rating agents, who may be quite content to mislead the VOA with inaccurate information in which case the fines should be imposed on the agents, not ratepayers.

Q4. We would welcome your views on the approach to implementing the package for small businesses and small organisations.

The fact the definition of ‘small business’ will vary within the business rates system makes the system even more complex and likely adds to existing confusion. Independent small businesses below £12k in RV qualify for 100 per cent Small Business Rate Relief and those between £12-15k RV qualify for tapered relief. All hereditaments below £51k RV qualify for the lower multiplier. Whereas a completely different definition based on a headcount of staff less than 10 and turnover or balance sheet total of less than £2 million is being proposed for CCA. It seems more practical to use a consistent definition of small business throughout the business rates system.

Benefits such as fast track, guidance and lower penalties should apply to all hereditaments below £51k RV. Turnover is not an indicator of ability to navigate the business rates system. For example, a business could have relatively modest turnover below £2 million, but very high profit margins. Conversely, many retailers have relatively high turnover, but small profit margins in a hyper-competitive market. Property is no longer an indicator of economic success given the transformation underway i.e. online sales meaning the current business rates system is unsustainable.

Q5. We would welcome your views on the approach to dealing with Material Changes in Circumstances.

We thank Government for recognising it is normally not possible to determine the valuation effect of an MCC until at least a year after the “material day” or event. We welcome having up to 16 months to submit a Challenge based on evidence collected during this period. However, ratepayers should not be rushed into making protective Checks and should be able to make a Check even after an MCC has passed.

As the Government proposes it would be impossible to lodge a ‘protective’ check following the expiry of an MCC event. The ratepayer would therefore be responsible for inspecting the property in order to fully complete Check which could take considerable time delaying the desired material day. We instead propose ratepayers wait until after a sufficient period has expired to decide whether a change in circumstances has had a significant negative effect and then to potentially make a Challenge under which the material day would be the date of commencement of the MCC.

Q6. We would welcome your views on the amended approach to determining appeals against valuations

Under the Government’s proposals, the VTE – which determines appeals against rates assessments in the third and final stage of CCA reforms – have been instructed to only order a change in a property’s rateable value if the valuation provided by the VOA is “outside the bounds of reasonable professional judgement”. The impact of these changes could be to give the VTE an effective veto over any appeal – based on ambiguous criteria which some have suggested is ‘blunting’ via the backdoor. It also removes the VOA’s incentive to compromise during the Challenge stage where a valuation is disputed.

We have been encouraged by reference to modernising and improving VOA services despite the lack of details of this ‘transformation programme’. Unfortunately, the result of this consultation clearly places more of the burden on businesses. We are disappointed because



we have been aiming for a more collaborative working relationship so that cases could be concluded within the Check and Challenge stages.

Q7. We would welcome your views on the role of local authorities in the reformed system.

The BRC fully recognises local authorities' need for information on the status and progress of cases so that they are able to effectively manage their finances. However, local authorities have a vested interest in obtaining the greatest tax take in an area; therefore, it is inappropriate for local authorities to influence VOA thinking to reach an accurate assessment.

Local authorities may have information that would be beneficial during the Check stage, but to "influence the outcome of cases where they have information to bring to bear and there may be large amounts of money at stake" seems wholly unfair. Billing authorities as has been demonstrated by the Government's local retention policy would be incentivised to receive the maximum amount of business rates revenue.

It is critically important the VOA maintain its independence. Local authorities' involvement in the valuation process should be limited to when they are the pertinent ratepayer.

Conclusion

The BRC hopes for a collaborative working relationship between the VOA and ratepayers where information and evidence can be shared and appeals avoided. However, we are seriously concerned about the provision the VTE will not make a change to a valuation deemed to be inaccurate because it does not fall "outside the bounds of reasonable professional judgement". This is a wholly unfair and unacceptable approach which if not corrected now may lead to even additional uncertainty for local government as it would almost undoubtedly be challenged in the courts. We hope the Government seriously considers our recommendations so that it achieves its stated aim to ensure "businesses will be confident that their valuations are correct" and the number of appeals decline.

About the BRC

Retail is an exciting, diverse and dynamic industry undergoing transformational change. The BRC is at the forefront – enhancing, assisting, informing and shaping. Our mission is to make a positive difference to the industry and to the customers it serves. Our broad range of stakeholders demonstrates how retailing touches almost every aspect of our culture.

The BRC leads the industry and works with our members to shape debates and influence issues and opportunities that will help make that positive difference. We care about the careers of people who work in our industry, the communities retail touches and competitiveness as a fundamental principle of the industry's success – our 3Cs.

More information

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