
Report To:	Policy & Resources Committee	Date:	18 September 2018
Report By:	Chief Financial Officer	Report No:	FIN/89/18/AP/LA
Contact Officer:	Alan Puckrin	Contact No:	01475 712223
Subject:	Council response to NDR Consultation – Barclay Review		

1.0 PURPOSE

- 1.1 The purpose of this report is to obtain Committee approval for the Council's response to the Scottish Government Consultation on proposed changes to Non Domestic Rates arising from the Barclay Review.

2.0 SUMMARY

- 2.1 The review of Non Domestic Rates in Scotland by Kenneth Barclay was published on 22 August 2017. The review made 30 specific recommendations of which 28 were accepted in full or in part by the Scottish Government who are in the process of progressing these.
- 2.2 Some of the recommendations in the Barclay report will have operational/administrative implications for the Council in its role as billing and collecting agent for the Scottish Government in Non Domestic Rates whilst others will have financial implications for the Council in its role as a rate payer. The major implication in the public sector however will fall on the assessors with the proposed move to 3 yearly revaluations as opposed to the 5 yearly revaluation. Cosla are co-ordinating input from the Assessors, Directors of Finance, IRRV and the Chief Financial Officer represents the Director of Finance section on the Implementation Advisory Group chaired by the Scottish Government.
- 2.3 The Scottish Government opened a consultation on the proposals which has a closing date of 17 September 2018 and given the importance to the Council and the impact on its wider Economic Regeneration agenda, the CMT agreed that a response be submitted via the Policy & Resources Committee.
- 2.4 Aside from the move to 3 yearly revaluations there are a number of other matters covered in the Consultation including changes to empty property relief, introducing general anti-avoidance regulations to close loopholes exploited by some rate payers, improvements to the information provided to businesses by Councils, new powers to obtain information from rate payers and removal of exemptions for a number of sectors from Non Domestic Rates. The full consultation document is attached as Appendix 1 and the Council's proposed response is attached as Appendix 2.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee considers the Council's response to the current Non Domestic Rates consultation and approves its submission to the Scottish Government no later than 19 September 2018.

Alan Puckrin
Chief Financial Officer

4.0 BACKGROUND

- 4.1 Kenneth Barclay undertook a comprehensive review of Non Domestic Rates within Scotland and reported on this to the Scottish Government on 22 August 2017.
- 4.2 The report contained 30 specific recommendations ranging from relatively minor housekeeping/administrative improvements to major changes such as removal of Non Domestic Rates relief from ALEOs to the move from 5 yearly revaluations to 3 yearly revaluations.
- 4.3 The Scottish Government considered the contents of the Barclay review and accepted in full or in part 28 of the recommendations. One which was not accepted was the removal of Non Domestic Rates relief from ALEOs however restrictions on the level of relief for ALEOs have now been implemented.

5.0 CURRENT POSITION

- 5.1 An implementation advisory group has been created by the Scottish Government and has met on a number of occasions with representation from COSLA, Directors of Finance, Assessors, IRRV, and various business organisations. The purpose of the group is to review the proposals and discuss the practicalities and wider implications of implementation of the recommendations accepted by the Scottish Government. The Council's Chief Financial Officer represents Directors of Finance on this group.
- 5.2 One of the main roles of the Implementation Advisory Group has been to help form the consultation document which was issued by the Scottish Government earlier in the summer of 2018 and for which responses close on 17 September 2018. The full consultation is attached as Appendix 1.
- 5.3 Given the potential implications for the Council both as the billing and collection agent for the Scottish Government and also as the rate payer, it is important that the Council responds to this consultation and as such, the Corporate Management Team agreed a response be put before the Policy & Resources Committee on 18 September. Thereafter, the final submission should be submitted to the Scottish Government on 19 September.

6.0 IMPLICATIONS

6.1 Finance

It is clear from the proposals that there will be a requirement for administrative changes including changes to software systems and the costs of this are currently being assessed at a national level. In addition, the Council will have a greater role in carrying out inspections of properties to verify reliefs and again there is likely to be a cost involved in this role.

The financial impacts arising from changes to the reliefs have largely been mitigated in the Council by the fact that the withdrawal of the reliefs from ALEOs was not agreed by the Scottish Government, albeit a ceiling has now been placed on each Council as to the level of relief. This will impact on the Council if it wishes to expand the property footprint within Inverclyde Leisure. The other significant impact on the Council is reductions in relief for empty industrial properties however, as the bulk of public sector industrial units are now operated by Riverside Inverclyde the direct impact on the Council will be reduced. Once it becomes more apparent what the actual financial implications of any approved regulations are then these will be brought back to Members either through the budget process or through specific reports.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
N/A					

6.2 Legal

The Scottish Government propose to progress primary legislation later in 2018 to implement large parts of the Barclay review whilst other aspects are being progressed outwith the legislative process due to their administrative nature.

6.3 Human Resources

The Council has an extremely limited Non Domestic Rates resource and implementing the changes proposed will be challenging. Discussions are ongoing with a number of other Councils regarding a potential Non Domestic Rates collaborative and further reports will be brought back to Committee on this matter.

6.4 Equalities

Has an Equality Impact Assessment been carried out?

Yes See attached appendix

No This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required.

6.5 Repopulation

There are no direct implications from this consultation response and the Scottish Government aspiration through implementing these changes is that it will create an environment which will potentially help support town centres and redistribute the burden of Non Domestic Rates throughout Scotland.

7.0 CONSULTATIONS

7.1 The contents of the consultation response have been endorsed by the Corporate Management Team and the Head of Regeneration and Planning.

8.0 LIST OF BACKGROUND PAPERS

8.1 Report of the Barclay Review of Non Domestic Rates – 22 August 2017.

Barclay Implementation

A consultation on non-domestic rates reform

Ministerial Foreword



As Cabinet Secretary for Finance, I am always seeking opportunities to make Scotland a better place to do business.

That is why when the *Report of the Barclay Review of Non-Domestic Rates* was published, I not only responded quickly but also built on some of the recommendations to create a competitive advantage for Scottish ratepayers. I believe those measures along with others in the Budget strike the right balance between offering a competitive and sustainable taxation environment while delivering sufficient resources to fund the public service upon which we all rely.

On 1 April this year I introduced a number of measures to underpin that competitive advantage. The growth accelerator and 100% relief for new build properties until first occupied will support speculative development and encourage improvements to our building stock. And our new targeted nursery relief will support a sector that is vital to ensuring an inclusive workforce. These measures are unique in the UK and apply equally to the public, private and third sectors.

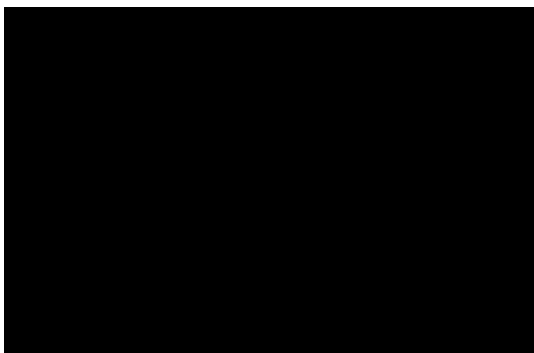
I am confident that these measures will not only attract new investment into Scotland, but also incentivise new developments and support employment.

Rates reform is a multi-faceted and multi-disciplinary piece of work, and to inform the implementation of the Barclay Review recommendations, I have convened an Implementation Advisory Group. I wish to thank the organisations represented on that Group for their work informing the drafting of this paper and their on-going work in progressing other non-legislative reforms.

Several of the Barclay recommendations require primary legislation and it is my intention to introduce a Bill during the current term of Parliament.

While the strategic direction of the reforms has been set by the Barclay Review, this consultation document seeks views on the specific details of how that legislation will work in a number of areas. This, along with the continued work of the Implementation Advisory Group and the targeted stakeholder engagement I plan to take forward over the Summer, will ensure the legislation I intend to bring forward in early 2019 not only delivers the recommendations of the Barclay Review swiftly but also efficiently and effectively.

No final decisions have yet been taken on the legislation ahead of the consultation or the final report of the Implementation Advisory Group and I would encourage all stakeholders to engage fully with this consultation process and I look forward to hearing your views.



Derek Mackay MSP

Cabinet Secretary for Finance and the Constitution

Background

1. Over the period from July 2016 to August 2017, Ken Barclay led a review into the business rates system in Scotland under the following remit -

“To make recommendations that seek to enhance and reform the non-domestic rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces, whilst still retaining the same level of income to deliver local services upon which businesses rely.”

2. The Barclay review published its final report on 22 August 2017 and made 30 recommendations to The Scottish Government.
3. In a statement to Parliament¹ and accompanying publication² on 12 September 2017, the Cabinet Secretary for Finance and the Constitution responded to 25 of the recommendations, accepting the vast majority, and noting that the remaining five required further engagement and consideration. Following that engagement, a further response was confirmed on 28 November 2017 in respect of council arm’s-length external organisations (ALEOs)³.
4. On 14 December an implementation plan including substantive responses to all 30 recommendations together with the Government’s implementation actions was published⁴. That included measures which went beyond what Barclay recommended, including several that are unique within the UK.
5. The overall response, ensures that Scotland offers the most competitive package of non-domestic rates reliefs in the UK.
6. To inform delivery of our Barclay response, Scottish Government convened an Implementation Advisory Group to advise on the details of a number of Barclay recommendations. The group has met several times so far and their views have informed this consultation paper. They will continue to meet to progress administrative reforms and discuss progress of primary legislation.
7. Several Barclay recommendations can be implemented administratively but others require the Government to bring forward legislation. The detail for each recommendation is set out in the table below.

¹ <https://news.gov.scot/speeches-and-briefings/response-to-the-report-of-the-barclay-review-of-non-domestic-rates>

² www.gov.scot/Topics/Government/local-government/17999/11199/NDRministerialstatement120917

³ <https://news.gov.scot/news/sports-arts-and-community-centres-to-keep-rates-relief>

⁴ <https://beta.gov.scot/publications/barclay-review-of-non-domestic-tax-rates-implementation-plan/Barclay%20review%20of%20non-domestic%20rates%20-%20implementation%20plan.pdf?inline=true>

Summary of Barclay recommendations

Table 1: Barclay recommendations - summary

Number	Description	Status	Legislation needed
1	Business growth accelerator	Accepted -implemented 1 April 2018	Secondary legislation (completed April 2018). Option for primary legislation-informed by this consultation paper
2	Three yearly revaluations	Accepted	Primary legislation needed. Informed by this consultation paper
3	Reduction in large business supplement	Accepted	Will be implemented by secondary legislation when affordable
4	New relief for day nurseries	Accepted – implemented 1 April 2018	Secondary legislation (completed April 2018)
5 a	Expanding fresh start relief to benefit town centres	Accepted – implemented 1 April 2018	Secondary legislation (completed April 2018)
5 b	Pilot scheme to increase rates out of town	Accepted	Primary legislation needed. Informed by this consultation paper
6	Review of plant and machinery valuation	Accepted	None. Administrative change
7	Review of Small Business Bonus Scheme	Accepted	None. Administrative change
8	'Road map' for future rates changes	Accepted	None. Administrative change
9	Provision of better information	Accepted	None. Administrative change
10	Relief recipients to be published	Accepted	None. Administrative change
11	Employ rateable value finder product	Accepted	None. Administrative change
12	More transparency & consistency from Assessors	Accepted	None. Administrative change
13	Greater information gathering power for Assessors	Accepted	Primary legislation needed. Informed by this consultation paper
14	Standardised rates bills across Scotland	Accepted	None. Administrative change
15	Incentivise online billing	Accepted	None. Administrative change
16	Penalty for non-provision of information to councils	Accepted	Primary legislation needed. Informed by this consultation paper
17	Councils to make refund payments faster	Accepted	Administrative change
18	Enable quicker debt recovery from ratepayers	Accepted	Primary legislation needed. Informed by this consultation paper
19	Reform of the appeals system	Accepted	Primary legislation needed. Informed by this consultation paper
20	General Anti-Avoidance Rule (GAAR)	Accepted	Primary legislation needed. Informed by this consultation paper
21	Close empty property relief loophole	Accepted	Primary legislation needed. Informed by this consultation paper
22	Close SBBS second homes loophole	Accepted	Primary legislation needed. Informed by this consultation paper
23	All relief awards to be checked for errors	Accepted	None. Administrative change
24	Reform charity relief	Partially accepted	Primary legislation needed for part of this recommendation. Informed by this consultation paper
25	Relief restricted to properties in active occupation	Accepted	Primary legislation needed. Informed by this consultation paper
26	Reform empty property relief	Accepted	Primary legislation needed. Informed by this consultation paper
27	Sports relief for affordable community facilities	Accepted	Primary legislation needed. Informed by this consultation paper
28	All property should be on valuation roll	Will not be progressed	N/A
29	Commercial agricultural processing	Will not be progressed	N/A
30	Commercial activity on parks etc.	Accepted	Primary legislation needed. Informed by this consultation paper

Introduction and how to get involved

8. The Scottish Government continues to engage with stakeholders on the implementation of Barclay, and this consultation paper seeks your views on those Barclay recommendations (highlighted in Table 1) which require primary legislation. A glossary explaining some rating terminology is at **Annex A**.
9. The recommendations requiring primary legislation appear in the following pages set out using Barclay's numberings and respective groupings of measures to support growth, to improve administration and to increase fairness.
10. The drafting of this consultation paper has been informed by the Implementation Planning Group, the membership of which is found at **Annex B**.
11. A partial Business and Regulatory Impact Assessment (BRIA) has been produced to accompany this consultation paper.
12. All correspondence should be addressed to NDR@gov.scot

Process

13. There will be a 12 week consultation period, which will run from 25 June to 17 September 2018. All responses will be published where consent is given shortly thereafter and each response will be considered fully.
14. It is our intention to introduce primary legislation following analysis of responses to this consultation.

CONSULTATION ON BARCLAY IMPLEMENTATION

MEASURES TO SUPPORT GROWTH

Barclay recommendation 1

A Business Growth Accelerator – to boost business growth, a 12 month delay should be introduced before rates are increased when an existing property is expanded or improved and also before rates apply to a new build property.

15. Secondary legislation has delivered these policies with effect from 1 April 2018 and similar secondary legislation will be laid in all future years to which this policy applies.
16. To simplify the current application based relief, an alternative would be to create a time delay in primary legislation to ensure that increases in rateable value due to a new property being built and occupied or improvements to an existing property do not take effect for a set period. To allow future flexibility, this could include a power to enable Ministers to vary the time delay by Regulations (either increasing or decreasing the current 12 months delay period depending on prevailing circumstances and affordability). This would also have the benefit of removing the need for ratepayers to apply for relief, ensure consistency in the approach across Scotland and reduce administration of relief applications by Councils.
17. Currently, secondary legislation has delivered these policies with effect from 1 April 2018 and similar secondary legislation will be laid in all future years to which this policy applies. However, the legislation is complex and primary legislation could simplify this.
18. In addition to recommendation 1, the Scottish Government went beyond Barclay and introduced a further measure which, from 1 April 2018, will see new-build properties receive 100% relief until first occupied.
19. To remove the need for the current application based relief for new build unoccupied property primary legislation could alternatively adjust the duties of the Assessor in relation to entries in the valuation roll. This would ensure a new build property would be entered on the roll only on the date of occupation. Again, this would simplify the process for ratepayers by removing the need for applications.
20. Alternatively annual secondary legislation could have the same effect.

Question 1 – What are your views on how the growth accelerator and new unoccupied build should be treated in legislation?

Barclay recommendation 2

There should be three yearly revaluations from 2022 with valuations based on market conditions on a date one year prior (the 'Tone date').

21. In order to reflect changes that occur over time, property valuations for rates are reassessed at regular intervals as part of a process known as Revaluation. At each revaluation, the Assessors have to determine the rateable value of each property at a fixed point in time, known as the Tone date. Currently legislation sets Non-Domestic Rates revaluations at five yearly intervals with the Tone date two years prior. We will legislate to change the revaluation cycle to allow three yearly revaluations with a one year Tone date from 2022 onwards. Barclay was clear that more frequent revaluations ahead of 2022 was not possible.
22. More frequent revaluations mean the timetable for dealing with the resulting appeals is reduced by two years. As such, the Implementation Advisory Group advise that delivery of this recommendation is heavily reliant on reforms to the appeals system (Recommendation 19) to ensure appeals are dealt with timeously and the vast majority are cleared before the start of the next revaluation cycle.

Question 2 – Do you have any comments on three yearly revaluations?

Barclay recommendations 3, 4 and 5 (a) do not require primary legislation and are outwith the scope of this consultation.

Recommendation 3 is for the large business supplement to be reduced when affordable, recommendation 4 is for a new day nursery relief, which was introduced in April 2018 and 5 a) is for an expansion of Fresh Start, which came into force on April 2018.

Barclay recommendation 5 b)

A new power to enable councils to impose an additional levy on rates in certain circumstances.

23. Barclay suggested a new discretionary power for councils to apply modest rates supplements in certain circumstances from 2020 for out-of-town ratepayers or predominantly online ratepayers. The proceeds would be used to support ratepayers in town centres. This should be a pilot scheme (involving no more than three towns) and must be subject to a formal evaluation to determine whether those pilots were successful prior to any further rollout.

24. The Implementation Advisory Group acknowledges that the Scottish Government has already committed to implement these pilots, but recommend that this measure include a number of safeguards.

25. It was suggested that those safeguards could include one or more of the following:

a) A cap on the level of supplement set in legislation determined by Scottish Ministers. As an example, this could be linked to the prevailing poundage rate (e.g. no more than a set percentage of the annual poundage rate).

b) A requirement for Ministerial and/ or Parliamentary approval for each scheme. If parliamentary scrutiny is considered appropriate this could be achieved by laying of Regulations for each pilot scheme.

c) A requirement for the local Council to consult on the scheme, including with local ratepayers and to publish analysis of this consultation prior to any approach being made to the Scottish Government to take part in a pilot scheme.

d) A requirement for local ratepayers to have a say on how proceeds from the supplement are spent (similar to the Business Improvement District model).

The Implementation Advisory Group also strongly supported Barclay's view that this should only be a pilot scheme and must be formally assessed prior to any wider rollout.

Question 3 – From 2020 a small number of pilot councils will have a new power to increase rates paid by out of town or predominantly online businesses.

a) Do you agree or disagree with putting in place safeguards?

b) Please explain your response to (a) including what the safeguards should be if you agree they are required.

Question 4 - Do you have any comments on the criteria and process which should be used to assess the pilot scheme(s)?

Barclay recommendation 6 is for a review of plant and machinery valuations. This has commenced by a separate process reviewing hydro valuations. This review is currently underway and is outwith the scope of this consultation.

Barclay recommendation 7 is for an review of the Small Business Bonus Scheme (SBBS). The Scottish Government are committed to implementing this recommendation, which will commence in 2018, and findings will be available in time to inform the 2022 revaluation. This recommendation is subject to separate process and is outwith the scope of this consultation.

MEASURES TO IMPROVE ADMINISTRATION

Barclay recommendations 8 - 12 are administrative and are outwith the scope of this consultation

8 - The Scottish Government should provide a 'road map' to explain changes to the rating system and should consult whenever possible on those changes, prior to implementation.

9 - There should be better information on rates made available to ratepayers – co-ordinated by Scottish Government.

10 - A full list of recipients of rates relief should be published to improve transparency.

11 - A "rateable value finder" product should be used – to identify properties that are not currently on the valuation roll, so as to share the burden of rates more fairly.

12 - Assessors should provide more transparency and consistency of approach. If this is not achieved voluntarily, a new Scotland wide Statutory Body should be created which would be accountable to Ministers.

Barclay recommendation 13

The current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies.

26. At each revaluation, the Assessors have to determine the rateable value of each property at a fixed point in time, known as the Tone date. Generally this involves information such as rent paid and details of rental agreements, but in certain cases may involve additional information such as construction costs or turnover.
27. Currently for certain areas or types of property the level and quality of information provided is low, meaning valuations may not be as accurate as they would otherwise be. This can result in the appeals system being used as the mechanism to correct valuations, putting undue burden on the appeal system and means the appeal process takes longer than it would otherwise.
28. The Scottish Government have committed to change primary legislation to remove the current criminal penalty for non-provision of information, which is rarely, if ever, used and replace this with a civil penalty, which will be simply to apply and enforce. This should incentivise higher information return rates and

ensure more accurate valuations. If valuations are more accurate, then fewer ratepayers should appeal resulting in less burden on the appeals system.

29. Any new penalty created will have to have a designated body that is responsible for administration and suitable provision for appeals against the penalty notice.
30. The penalty is not intended as a revenue raising measure, but rather an incentive to ensure better information from the outset and remove the need to rely on the appeal system to set valuations at the correct level.
31. The range of organisations/ individuals that the Assessors can request information from to inform valuations will also be considered for expansion.

Question 5 - What level(s) should this civil penalty be set at?

Question 6 - How should the penalty be set? Should it be a fixed penalty or proportionate to/ banded by rateable value?

Question 7 - Do you have any views on who is responsible for administering the penalty and the process for appeals against the penalty notice?

Question 8 - Which organisations/ individuals should be required to supply necessary information to the Assessors, where applicable?

Barclay recommendations 14 and 15 are administrative and will be taken forward without primary legislation and are outwith the scope of this consultation.

14 - Standardised rates bills should be introduced across Scotland.

15 - Ratepayers should be incentivised to sign up for online billing where available except in exceptional circumstances.

Barclay recommendation 16

A new civil penalty for non-provision of information to Councils by ratepayers should be created.

32. Barclay noted that it is important that Councils have up to date information on occupiers of non-domestic property to ensure that bills are accurate and relief is correctly applied.

33. This is required to prevent fraud, but also ensures the correct ratepayer is billed for the correct amount. The Scottish Government have committed to change primary legislation to create this penalty. This should ensure better information and more accurate bills issued to the correct ratepayers.
34. It is not intended to be a revenue raising exercise but penalties are intended to deter fraud and ensure information is kept up to date.
35. This runs in tandem with separate recommendations to ensure that Councils improve their services to ratepayers e.g. through faster repayment of any overpayments and better provision of information.
36. The Implementation Advisory Group believe there should be a duty for a ratepayer to inform the local council within 28 days of when they move in and move out of a non-domestic property and to provide any information on request by the Council within the same timeframe. This could include, but is not limited to, evidence of relief entitlement. The penalty could be an automatic fixed amount applied to bills or one which the Council has discretion over e.g. if there are extenuating circumstances the Council can waive the penalty.
37. Any new penalty created will have to have a designated body that is responsible for administration and suitable provision for appeals against the penalty notice.
38. The penalty is not intended as a revenue raising measure, but rather an incentive to ensure better information.

Question 9 - What level(s) should this penalty be set at?

Question 10 - How should the penalty be set? Should it be a fixed penalty or proportionate to / banded by rateable value?

Question 11 - Do you have any views on who is responsible for administering the penalty and the process for appeals against any penalty notice?

Question 12 - Should this be a mandatory penalty or one that the Council has discretion over (please indicate your preference and add any comments)?

Barclay recommendation 17 does not require primary legislation and is outwith the scope of this consultation.

17- Councils should refund overpayments to ratepayers more quickly.

Barclay recommendation 18

Councils should be able to initiate debt recovery at an earlier stage.

39. Currently debt recovery Council tax takes place earlier in the financial year than it does for rates. From 2020 the Scottish Government will bring debt recovery for both kinds of local taxation (non-domestic rates and Council tax) into line. This means a council will be able to initiate enforcement action for non-payment of rates earlier in the year to ensure fairness among all tax payers (both citizens and businesses). This may also reduce avoidance. It would also be an option to allow Councils some discretion over exceptional circumstances.
40. This runs in tandem with separate recommendations to ensure that Councils improve their services to ratepayers e.g. through faster repayment of any overpayments and better provision of information to ratepayers.
41. Ratepayers will also need to be aware that payments still need to be made regardless of whether a bill is in dispute, for example whilst an appeal is progressing. This could be achieved by including this information prominently on bills if it is not already included.

Question 13 - How should the debt recovery changes be communicated to ratepayers?

Question 14 - What are your views on whether Councils should retain a discretion over debt recovery to allow for any extenuating circumstances?

Barclay recommendation 19

Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness.

42. In the longer term, the functions of the current Valuation Appeal Committees (VACs) are expected to transfer to the Scottish Tribunals in 2022, noting that the functions of the VAC extend beyond those related to non-domestic valuation. Those reforms will be made under separate legislation, however one recommendation made by Barclay was that the outcome of an appeal should be to increase as well as decrease the rateable value of a property.
43. Currently the valuation appeals system is risk free for ratepayers in that the valuation may only decrease or remain the same. Whilst the majority of appeals result in no change for the ratepayer, and an appeal cannot increase the valuation even if there is new evidence to support such an outcome.

44. As noted in Recommendation 2, it is considered critical by the Implementation Advisory Group that the appeals system is reformed in order to deliver a more effective system and to support the move to three yearly revaluations.

45. It is not anticipated that this will impact on significant numbers of ratepayers, nor that it will raise significant amounts of revenue, but if during the course of an appeal it becomes apparent that a valuation is too low, this could be corrected to ensure fairness with other ratepayers.

Question 15 - How should this change be communicated to ratepayers?

Question 16 - Do you have any points about the change to allow valuation appeals to increase?

Barclay recommendation 20

A General Anti-Avoidance Rule (GAAR) should be created to reduce avoidance and make it harder.

46. There will always be those who try to avoid paying taxes to create a competitive advantage for themselves to the detriment of others.

47. Where possible, known loopholes will be closed (see recommendations 21 and 22). However, even as loopholes are closed, there will be those who look to new ways to exploit the system to create an unfair advantage.

48. The Implementation Advisory Group agrees that action should be taken to tackle those who deliberately avoid payment of taxation. A General Anti Avoidance Rule (GAAR), as used in other taxes, will also go some way to future proofing the system and allow Councils to act swiftly to tackle new avoidance tactics as they arise.

Question 17 - When the General Anti Avoidance Rule is introduced, do you have any recommendations or principles that this should encompass?

Barclay recommendation 21- *To counter a known avoidance tactic, the current 42 days reset period for empty property should be increased to 6 months in any Financial year.*

49. Currently, after a 42-day period of occupation a property can be eligible for empty property relief (e.g. 100% relief for six months for industrial property). This is open to abuse through patterns of occupation aimed at obtaining successive periods of empty relief.

50. The Scottish Government will change the rules around the eligibility for empty property relief to reduce this known avoidance tactic from 2020. This will increase the period a property must be occupied before a new period of empty property relief may be claimed from 42 days to 6 months. Barclay advised that the 6 month period should be discontinuous so as not to inhibit pop-up uses of empty premises.

51. Additional reforms to empty property relief are addressed under Recommendation 26.

Question 18 – How do we raise awareness of this change among ratepayers?

Question 19 – Do you have any further comments around the 6 month reset period for empty property relief?

Barclay recommendation 22

To counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting for 70 days.

52. Currently, for self-catering holiday accommodation to be entered in the valuation roll (and thereby be liable to non-domestic rates, rather than council tax), it must be made available for letting for a total of at least 140 days in the year in question. However, it need not actually be let for any period.

53. This is open to abuse, such as by owners of second homes who wish to avoid council tax, who claim a property is available to let with no actual intention of letting it. Such properties can then be eligible for 100% rates relief under the Small Business Bonus Scheme, with the outcome that no local tax is paid by the property (either non-domestic rates or council tax).

54. The requirement will be changed so that actual let for 70 days and intended let for 140 days must be evidenced by the ratepayer to allow the property to be able to be classed as a non-domestic property.

55. This could be either a mandatory requirement or one with local discretion to allow flexibility e.g. for small numbers of genuine self-catering properties where the individual property is incapable of being let for 70 days due to circumstances outwith the owners control. An example of this could be due to poor access to the property following a landslide or in the event of periods of prolonged adverse weather.

Question 20 - Should there be any local discretion in the application of this policy?

Question 21 - If your answer to question 18 is yes, under what circumstances should this discretion apply?

Barclay recommendation 23 is for the Scottish Government to check relief awarded and does not require primary legislation and is outwith the scope of this consultation.

Barclay recommendation 24

Charity relief should be reformed/restricted for a small number of recipients.

56. The Scottish Government will remove charity relief for most independent schools from April 2020 to bring independent schools into line with Council schools. However, the Scottish Government has committed that schools for children and young people with additional support needs that are in receipt of disabled persons relief or charitable relief will be able to retain that relief.

57. There may be a small number of independent schools with exceptional circumstances, such as specialist music schools that require further consideration.

58. Additional separate engagement will be undertaken with the sector.

The separate strand of this recommendation for ALEO (Arms Length External Organisations) properties is being taken forward administratively.

59. **Question 22** - How should independent schools with exceptional circumstances such as specialist music schools be treated?

Barclay recommendation 25

To focus relief on economically active properties, only properties in active occupation should be entitled.

60. This change will primarily impact on empty properties either previously occupied by charities which receive charity relief (not empty property relief) or empty properties that claim the more generous SBBS instead of empty property relief.
61. Active occupation must be defined in a way which does not give rise to avoidance so for example could include floor space used, accessibility to the public and/ or council, demonstration of accounts for a business in operation at the property. A combination of these or any other criteria could form the basis of a definition. An alternative could be for the General Anti Avoidance Rule to be utilised in cases where a property is not in active use, but claims a relief other than empty property relief.

Question 23 - How should active occupation be defined?

Barclay recommendation 26

To encourage bringing empty property back into economic use, relief should be reformed to restrict relief for listed buildings to a maximum of 2 years and the rates liability for property that has been empty for significant periods should be increased.

62. From 2020 empty listed property will receive 2 years 100% relief and thereafter receive 10% relief in line with other types of empty property. Additionally, any type of property that is empty for over 5 years, with the exception of listed property, will pay a 10% bill surcharge after 5 years. This will create incentives to bring all types of empty non-domestic property back into economic use.
63. It has been suggested by the Implementation Advisory Group that property in the planning process could be excluded from reforms, but this could have consequences if the planning system were abused with properties “parked” in the system to avoid payment of local taxation. An alternative may be to allow local discretion.
64. Additional separate engagement will be undertaken with the sector and the impact of this policy on the public sector will be considered.

Question 24 - What are your views on whether Councils should have discretion in the application of this measure for properties, so that local circumstances can be accounted for?

Barclay recommendation 27

Sports club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief.

65. This relief is currently offered to affordable, community sports clubs and it is anticipated that 95% of current recipients of this relief will be unaffected.
66. However, a small number of clubs with very high fees and/ or membership policies which specifically exclude certain parts of the local community may lose relief as a result of reforms.
67. Options for reform could include incorporating a requirement for all beneficiaries to have inclusive and transparent membership policies, membership fees below a certain threshold, availability of the facilities to the local community or other criteria.
68. Additional separate engagement will be undertaken with the sector.

Question 25 - How should affordable/ community sports facilities be defined?

Barclay recommendations 28 and 29 will not be progressed by The Scottish Government and are outwith the scope of this consultation.

Barclay recommendation 30

Commercial activity on current exempt parks and Local Authority (council) land vested in recreation should pay the same level of rates as similar activity elsewhere so as to ensure fairness.

69. Currently public parks and land vested by the local authority in recreational purposes are exempt from entry in the valuation roll and hence commercial activity taking place on these pay no rates. From 2020 the Scottish Government will remove those exemptions and rates will become payable on the property or land within the park undertaking that activity.
70. Additional separate engagement will be undertaken with the sector.

Question 26 – How should commercial activity on parks be defined?

ANNEX A

Glossary

Appeal - The valuation appeals system allows a ratepayer to challenge the Assessors rateable value for their property. This has various stages, but initial appeals are heard by local panels.

Assessor - An independent public official who determines the rateable value of all properties entered on the valuation roll, along with other functions. Assessors must be members of the Royal Institution of Chartered Surveyors and work under a non-Statutory umbrella body called the Scottish Assessors Association.

Council Tax - a property tax levied on domestic property and used to fund local services.

Non-domestic rates - A property based tax, also known as business rates, levied on non-domestic property that is used to fund local services provided by the council, including those provided to businesses. The rating system is administered by councils.

Rateable value (RV) - For most property this is the Assessor's determination of one year's annual rent on the open market. This is determined by looking at rents for similar or nearby properties.

Ratepayer - Anyone who is liable for rates on a non-domestic property. Ratepayers include businesses, public sector, third sector and citizens.

Relief - A discount/ reduction applied to the rates bill of eligible properties. Most reliefs are funded by the Scottish Government, although councils do have discretion to create their own reliefs.

Revaluation - All properties are reassessed by the Assessors at a revaluation, the purpose of which is to redistribute the tax based on more recent market conditions. The last revaluation was in 2017, the next planned revaluation will be in 2022.

Tone date - The date at which all properties are valued by the Assessor. Currently this is 2 years before the revaluation date. Using a single date for all properties ensures fairness and allows the Assessor sufficient time to collect evidence from ratepayers. The Tone date for the 2017 revaluation was 1 April 2015.

Valuation Roll - A record of all non-domestic (business) premises valued by the Assessor, including their address, rateable value and other related data. Valuation rolls are searchable online at www.saa.gov.uk

ANNEX B

Membership of Implementation Advisory Group

The following organisations were represented on the group -

CBI Scotland

CoSLA

Federation of Small Business

Institute Revenue Rating and Valuation

Rating Surveyors Association / RICS

Scottish Assessors Association

Scottish Chambers of Commerce

Scottish Property Federation

Scottish Retail Consortium

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W W W . G O V . S C O T

Briefing Note to: Policy & Resources Committee
Subject: Barclay Implementation Consultation - Comments
Date: 18th September 2018
By: Alan Puckrin

Question 1 – What are your views on how the growth accelerator and new unoccupied build should be treated in legislation?

Answer – The Council would support primary legislation on the basis it should streamline processes for both Councils and Businesses.

Question 2 – Do you have any comments on 3 yearly revaluations?

Answer – Whilst this is clearly more a matter for Assessors there will be resource implications for both Assessors and the appeals process/system which will need to be addressed.

Question 3 – From 2020 a small number of pilot Councils will have a new power to increase rates paid by out of town or predominately online business

a) Do you agree or disagree with putting in place safeguards?

Answer – There should be safeguards but there needs to be sufficient flexibility locally for local solutions to be developed.

b) Please explain your response to a) including what safeguards should be in place if you agree they are required

Answer – The Council supports the proposals to run pilots as learning exercises however we do not see the need for parliamentary approval to be required in each case as if this is a matter for Councils then it should be left to Councils to implement.

Question 4 – Do you have comments on the criteria and process which will be used to assess the pilot schemes?

Answer – No

Question - 5,6,7,8

Answer – These are matters for the assessors to respond on.

Question 9 – What level should this penalty be set at?

Question 10 – How should the penalty be set? Should it be a fixed penalty or proportionate to/banded by rate or value?

Answer to Q9 and Q10 – The experience with Council Tax is that civil penalties are seldom used or enforced due to the relatively low value and the difficulty in collection. However if legislation was set to create a civil penalty for non-provision of information then it should be banded but not overly complex.

Question 11 – Do you have any views on who is responsible for administering the penalty and the process for the appeals against any penalty notice?

Answer – It should use the same administration and appeals process as exists for Council Tax.

Question 12 – Should this be a mandatory penalty or one the Council has discretion over?

Answer – It should be discretionary as there will be areas where it is debateable whether penalty should be applied or not and it will lead to unnecessary bureaucracy and dispute if such a charge becomes mandatory.

Question 13 – How should Debt Recovery changes be communicated to Rate payers?

Answer – There should be a multifaceted approach involving all media channels, business forums as well as communication directly with all Non-domestic rate payers through annual billing.

Question 14 – What are your views on whether the Council should retain discretion over Debt Recovery to allow for any extenuating circumstances?

Answer – A similar approach to Council Tax should be used where by normal billing and reminder processes are in force however Councils can agree an alternative repayment profile with debtor in extenuating circumstances.

Question 15 – How should this change be communicated to Ratepayers?

Answer – same answer as Q13

Question 16 – Do you have any points about the change to allow valuation appeals to increase?

Answer – The Council believes this is fair approach and will help concentrate appeals on those where there is a genuine case as well as creating a more level playing field. The knock on impact to neighbouring properties who did not appeal requires to be clarified.

Question 17 – When the general anti-avoidance rules are introduced do you have any recommendations or principle that this should encompass?

Answer – As the scale of rates avoidance is growing the anti-avoidance rules need to address the issue of “Phoenix Trading”; using shell or subsidiary companies as “tenants” for rating purposes, non-payment of rates, then dissolving the company leading to a write-off of rates due to “insolvency”. There should be a register of directors reported for “Phoenix Trading” and appropriate action requires to be taken to curtail this behaviour. Councils could have legal powers to hold parent companies liable for rates. Alternatively the responsibility for paying business rates could be placed on the owner of a property.

Rates avoidance through the Small Business Bonus Scheme should be addressed, we have experience of multiple limited companies qualifying for SBBS relief even though they have the same directors and carry out the same activity. In one case fourteen separate companies have been set up by the same directors, carry out the same activity, and qualify for SBBS at each of their fourteen properties.

Question 18 – How do we raise awareness of this change amongst Ratepayers?

Answer – same answer as Q13

Question 19 – Do you have any further comments around the six month reset period for empty property relief?

Answer - This change is to be welcomed, there is a growing trend for repeated short term periods of artificial/contrived occupancy. There should also be rules around de minimis occupancy such as “occupancy” by a Bluetooth device or minimal occupancy of a large unit by a charity at zero/minimal rent. Additionally the 6 month period should be assessed on a rolling 12 month basis and not restricted to Financial or calendar years as this creates artificial break points.

Question 20 – Should there be any local discretionary in the application of this policy?

Answer - There should not be any further local discretion over and above existing NDR hardship relief rules.

Question 21 – If your answer to Q20 is yes under what circumstances should this discretionary apply?

Answer – not applicable

Question 22 – How should independent schools with exceptional circumstances such as specialist music schools be treated?

Answer – The Council does not understand why teaching music should exempt a school from paying NDR. Surely the financial position of the school and achieving equity with public sector schools is the main requirement?

Question 23 – How should active occupation be defined?

Answer – To be in active occupation there should be a business activity or trading taking place from the premises. If the property is being occupied for storage purposes only then there should be a legitimate reason for the premises being used for this purpose. De minimis occupation or occupation by a Bluetooth device should not define a property as being actively occupied.

Question 24 – What are your views about whether the Council should have discretion in the application of this measure for properties, so that local circumstances should be accounted for?

Answer – The Council believes that it is correct to tighten up the legislation in this area and welcome separate engagement proposed in paragraph 64 of the consultation. There is also needs to be a review of the level of rateable value for derelict prominent buildings. At present it is too low for there to be incentive for owner to act to bring derelict properties back into occupation.

Question 25 – How should affordable/community sports facilities be defined?

Answer – The Council supports the proposals from paragraph 67 of the consultation.

Question 26 – How should commercial activity on parks be defined?

Answer – It is fair that business operating within parks should pay the same level of rates as similar activity elsewhere.