

The Scottish Government

17 September 2018

Dear Sir/Madam

**Barclay Implementation – Consultation on Non-Domestic Rates Reform**

**Introduction**

Accessible Retail (AR), is the trade body which represents the property interests of the retail warehouse and retail park sector of the retail industry. We have over 1200 members comprising retailers, developers, owners/investors and advisers, including most of the major companies active in the sector

Our sector plays a significant role in the Scottish economy with many of our members trading in the rest of the UK, Europe and beyond as well across the UK our sector accounts for a third of total retail spend and comprises the largest part of investment grade retail commercial property. We employ some 750,000-800,000 people.

**General Comments**

Business rates are one of the major costs of retailing in Scotland and among the highest levied in Europe. Inability to pay them is one of the components of retailer insolvency and the resultant loss of retail jobs is damaging to the Scottish economy.

Such insolvencies and job loss occur across all retail formats, not just in high streets. Given the importance of retailing to GDP and employment, job losses in the retail parks and warehouses sector should be a matter of concern as well.

Further, the threat to high streets comes predominantly not from retail parks and warehouses, but from Pure Play on-line competitors. Over the past 10 years, retailing has undergone the fastest evolution in its history. Technology has changed the way people spend with the rise of on-line trading creating a new competitive market place which now accounts for some 17% of sales by value and is rising year on year.

However, although accounting for nearly one-fifth of the market, Pure Play retailers directly employ only 61,000 people and do not contribute by some considerable margin a commensurate proportion of the total business rates paid by the retail industry. Despite this, they are heavy users of Scottish infrastructure. Considering that retailers as a whole pay some 25% of business rates collected, the Pure Play sector has a competitive advantage over high streets and retail parks. In our view (and that of many advisors to the industry), this is the most significant contributor to the trading difficulties being encountered in high streets.

We support the introduction of measures to revive town centres and high streets, but penalising our sector with a rate supplement will not secure this outcome. Driven by the new competitive market place we describe, retailing has undergone a structural change. Retailers with multiple outlets now need fewer stores and are looking for new units with modern, larger and well configured space which is convenient and accessible to their customers.

These requirements have left many with wrongly configured and uneconomic estates. For some, town centres and high streets especially no longer provide them with the cost efficient trading spaces needed to be able to respond to this new competition. These locations are now high cost (rates, rent, parking and build costs), the effect of which has been to reduce trading margins to a level where business has become unsustainable.

The result has been a shift in the location of multiple stores from secondary to primary centres and to retail parks and warehouses. It is widely held among retailers and their advisers that this trend is permanent. The answer to town centre and high street renewal lies in diversification into other uses; reliance on previous levels of retail provision is unsustainable in the new retail landscape.

Therefore, the present proposal to levy a surcharge on out of town traders has four considerable drawbacks:

* It will not help high streets to compete with the real threat, i.e. on-line Pure Play traders;
* It will increase the occupational burden on a sector already stretched to breaking point (as evidenced by the number of retail insolvencies in the past twelve months);
* the pilots will create a two tier market with the scenario that two adjoining authority areas could have a different tax rates;
* It fails to recognise the structural change which has taken place in retailing.

Given all these arguments, it is all the more important that the Government accepts the views of the Implementation Advisory Group and Barclay and subjects the three pilot schemes to a formal assessment prior to any wider rollout. In this respect, it is of concern that the Government is largely leaving to the pilot authorities how they will implement the pilot schemes. In our view this has two drawbacks:

* It increases the uncertainty facing business ratepayers in these towns; and
* as it is quite likely that practice will differ between them, the task of drawing meaningful conclusions is made more difficult.

Lastly, the pilot schemes will provide insights into the practicality of operating the supplementary rates but, in our view, for the reasons we set out earlier, the more important consideration is to assess their impact. In particular:

* has their imposition made any meaningful contribution to halting the structural change we refer to earlier (in our view, the only meaningful test); and
* what has been the impact on the retail parks and warehouses paying the supplement (i.e. increased insolvencies and job losses)?

We strongly believe the answers to these two considerations are likely to be ‘little or none’ and ‘damaging to jobs’. In this proves to be the outcome, we urge the Scottish Government to drop the supplementary rate proposal and direct its action towards identifying another means of creating a more level playing field between Pure Play operators and all other retailers.

Meanwhile, we recognise that the Government intends going ahead with the pilot schemes and we address the other questions you pose to try and ensure that the other proposals in the consultation work as fairly and efficiently as possible.

**Responses to Questions**

**MEASURES TO SUPPORT GROWTH**

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

We consider it appropriate to bring into assessment new property once complete and occupied but also welcome a delay in taking such action. We have concerns relating to the regulations required to ensure that when a developer sells a new property prior to it being occupied for the first time that this should not be to the detriment of the new purchaser and that new purchasers should be aware of all costs associated with the property including an assessment of the entry in the roll.

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

We welcome a move to three yearly revaluations and consider that the change will result in a number of benefits to ratepayers which will of course include many of our members.

Any changes to the current system that better reflect market changes are welcome and such an approach ensures that the tax base reflects market conditions.

The frequency of revaluations with a move to 3 yearly does still require for transparency on all fronts and that includes ensuring that the information upon which the assessment is made being made available in advance.

It is also essential to have consistency and accurate details upon which both the Assessor and the ratepayer can judge the roll entry.

One area of concerns that does present itself concerns the consideration of alterations to the roll during the revaluation period. Currently it seems that the interpretation of the courts is not to entertain material changes save for the exception circumstance and therefore if a move to three year revaluations ensure a more frequent review of the assessment then this is welcome.

The appeal regulations also require close attention on matters such as the current appeal disposal timetable which is unworkable for a 3 yearly revaluation. The current appeal disposal period is 3 years. This disposal period would need to be reduced if appeals were to be concluded before the next revaluation. This may place additional pressure on Assessors staff.

**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.**

As expressed earlier, we have significant concerns about the proposed supplement for out of town retail; we believe valuations should not increase in Scotland. In essence, retail as a whole has encountered a significant cultural shift with now over 17% of all retail transactions taking place on line. It is therefore of concern that this proposed levy on out of town retail will not in our view address the move to clicks from bricks and would have a detrimental impact on established retail parks and warehouses.

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

Further to the points we make in our general comments, there are a number of questions concerning the roll out of the process which need consideration.

Firstly the approach to determining whether the pilots are successful. What criteria will be used as at present it merely seems to be an attempt to add an additional charge for those who do not retail in a city centre.

We suggest that the levying authority must present a robust case to justify the levy which should be subject to ratepayer challenge and independent review before implementation. The consultation suggests parliamentary approval be required however, the Scottish Government may have a vested interest in the approval of a scheme and as such we consider an independent body should be involved in any decision.

The levying authority must be able to demonstrate a direct financial correlation between any levy and the financial benefit conveyed to a town centre. The consultation paper suggests that local ratepayers have a say on how the proceeds are spent.

The levy must be subject an annual review. This allows for any negative effect on an out of town location to be rectified and to assess of the scheme is achieving its aims.

The levy must be subject to a modest cap. An unfettered levy would be entirely unacceptable.

MEASURES TO IMPROVE ADMINISTRATION

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

We consider that if any penalty is appropriate, it should be a civil penalty which should be subject to an appeal process. We consider consistency is appropriate and in England a Civil Penalty of £100 is made if information is not returned with 56 days. We consider a similar approach to be reasonable. If information is not forthcoming within a further period of time and we suggest 28 days a further penalty of £100 should be applied increasing by £20 per day thereafter.

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

A fixed penalty is appropriate

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

In our opinion this should be administered by a body independent of the various Assessors’ departments. This area requires further consultation on matters such as (a) who determines that the party is liable for the penalty in the first place (b) can the penalty be appealed and (c) who determines if any information provided does or does not satisfy any criteria to be considered as non-compliance.

A possible solution would be that the penalty is issued upon application by the Assessor to a Valuation Appeal Committee or Finance Committee.

The Assessor should not be able to be able to apply a fine at its discretion. In the experience of our members, Assessors’ processes and capabilities are often lacking; systems are not in place to check existing information and rather than doing so, more requests for information are issued. As a result, our members are often required to send duplicate returns of information

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

It is essential that the proprietor/tenant or occupier is the person responsible for the provision of information. It should not be an agent or third party. A third party may simply not have the required up-to-date information; and considerable time and resource may be required to try to confirm the situation, which leads us to suggest that it would be better communicated by proprietor/tenant or occupier.

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

As stated in our response to Question 5, if any civil penalty is to apply we consider a level of £100 should be the starting point rising to £100 after a further period should the information not be provided thereafter increasing by £20 per day. The current 14 day timescale for provision of information is inadequate and needs to be increased. In England the time limit is 56 days.

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

This should be set as noted above and reviewed at each revaluation

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

See our response to Q7.

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

The penalty should be an application based system and thus not mandatory. See response to Q7.

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

It is essential to ensure that these changed be communicated by Scottish Government with a concerted information campaign. It is also important to ensure appropriate safeguards are in place.

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

There should be the opportunity for the Council to remit the charge using local discretion.

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

A campaign effected by Scottish Government would be considered most appropriate

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

In our view, this this question raises two competing considerations.  On the one hand, allowing valuations to increase in this way would help ensure an accurate tax base to the benefit of all parties (the practice followed in England and in Wales).  On the other hand, such a power would create significant uncertainty for ratepayers and could lead to inconsistency in valuation. For example, would consequential adjustments be permitted with the Assessor able to increase the value of properties adjacent to the appeal subject?  The Assessor already has the ability to increase a value where a clear error has occurred and these powers are sufficient.

As it stands, ratepayers have approximately 6 months to lodge an appeal after the rateable value is confirmed. The summary valuations are not available for all subjects (including many food stores and retail warehouses). It is very difficult to reach a judgment on whether an RV is too high or low inside that 6 month period particularly when the valuation information is not provided. Creating the powers to increase a value implies that a ratepayer is effectively being punished for lodging an appeal, when that appeal may simply have be a consequence of the prescribed appeal time limits and the lack of information provided.  This needs to be avoided unless there is a fundamental change in the regulations and/or compulsion to provide more information.

Both approaches have their merit, but, on balance, our Scottish members believe the latter argument is the most persuasive and such increase in value should not be permitted.

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

The proposed change to empty property rates relief should address most instances of rate avoidance. It is important to note the long standing doctrine that evasion is illegal but application of the law to mitigate or manage tax liability within the law is clearly legitimate. Clarity on what is and what is not appropriate needs to be communicated to all stakeholders. A General Anti Avoidance Rule needs to be communicated clearly and should be set out at an early stage to all stakeholders.

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

We recommend that the Scottish Government considers providing guidance that helps ratepayer understanding the key issues and the application to the system. In a number of instances, the courts have been presented with cases that have focused on the issue of occupation. Clarity from the Government, in the form of guidance, about the issues including a definition of meaningful occupation would be of assistance.

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

A longer period of rest would in our view be appropriate. The approach to administration should be as simple as possible and transparent. A longer period of time between reset would enable

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

Local discretion in the application of this policy is essential but should be based on some common standards set nationally.

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

Discretion should be applied in the case of hardship and be judged on a case by case basis

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

No comment.

**Question 23 - How should active occupation be defined?**

No comment.

**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?**

No comment.

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

No comment.

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

No comment.

Finally we would add that Accessible Retail would be very pleased to discuss our

comments with you further if the opportunity were to arise.

Yours Sincerely



William McKee

Chief Executive

Accessible Retail,

Orb Support Ltd, PO Box 164,

Saffron Walden,

Essex,

CB10 9AA

Email william.mckee@btclick.com

Mobile 07711 069 140

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