

## Response ID ANON-79J9-VK21-Q

Submitted to **Barclay Implementation: A consultation on non-domestic rates reform**

Submitted on **2018-09-17 15:12:16**

### Barclay recommendation 1

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

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

Relief for New Build properties until point of first application.

There are clear, early signs of success with the new policy on new build and the growth accelerator relief for occupiers of new build. We are aware of major schemes where the mindset on getting on site quickly, or reconsidering long delayed projects, has moved favourably as a result of the policy introduced in April. We are monitoring the progress of these schemes and intend to submit a report to the government shortly. Similarly the new build-new occupier relief is helping to attract or to retain major corporate occupiers and businesses in Scotland.

It would support certainty and predictability for developers and investors if the current applications-based relief process could be consolidated in primary legislation. In order to remove the need to apply for relief an adjustment to the powers of the Assessor would simplify procedure and remove the need to apply for relief.

Developers have also expressed uncertainty to the SPF regarding the position of redevelopment and the relief for new build properties. For example, where a property is fully stripped back to shell before being redeveloped then arguably this is new build and could be treated as such for the purposes of the Assessors' entries to the valuation roll. There is currently uncertainty on this point and yet the redevelopment of often derelict buildings would appear to be a clear objective of the Scottish Government and local government. We recognise the government would wish to have clear policy on the extent of a redevelopment that would qualify for the full relief until point of first occupation and the SPF would be happy to support any such analysis.

The 12 month relief for new occupiers is a firm incentive for location in Scottish new build for businesses and as reported above is showing some early signs of success. In the context of the wider business rates relief package we would see the case for the primary legislation enabling secondary powers that may amend the time limits or make other criteria in the future however,

### Barclay recommendation 2

#### 2 Do you have any comments on three yearly revaluations?

**Do you have any comments on three yearly revaluations?:**

The SPF has argued consistently for three yearly revaluations, supported by a one year gap to the relevant tone date. The benefit of more frequent revaluations that are more closely aligned to the tone date should be a much better reflection of the commercial property market than the current position where we have had a seven year gap between revaluations. In itself this should reduce the number of Appeals based on, for example, MCCs.

We believe the 2022 date for the next Revaluation which will then begin the three yearly cycle, is both welcome and realistic, with the tone date set (as it normally would be) for April 2020.

### Barclay recommendation 5 b)

#### 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.

Yes

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

The SPF is not persuaded of the benefit of further business rate supplements for out of town ratepayers. These ratepayers already, in large part, pay the large business ratepayer supplement and they may also contribute to a Business Improvement District as well (not all BIDs are town centre based). The Scottish Government will be aware of the acute pressure faced by retailers, large as well as small, and their landlords and investors. This is leading to a situation where major names in the retail world are closing due to administration and we are already seeing a large number of stores becoming vacant - note that the former BHS stores are even now mostly vacant in Scotland and as a result of their administration it is doubtful that any empty property rates are being realised at all by these large premises. In relation to online then this is again a challenge to clearly identify who the target ratepayer is and what potential benefit for town centres could emerge from a supplement. We feel that there are other measures better placed to address any perceived lack of fairness in the current tax arrangements between predominantly online businesses and their more traditionally-based 'bricks-and-mortar' competitors. There is also likely to be a case for seeking UK wide agreements at least on any such measures given the ease with which online retailers may be able to relocate their operations.

Neither is the proposal clear on exactly what benefit would come to the town centres that these proposed supplements are intended to support. For this reason we believe Ministerial and Parliamentary approval should be sought for any pilot scheme and that such proposals must only come forward after extensive consultation by the relevant authority. However, we repeat: we do not think supplements on large out of town or predominantly online retailers are likely to achieve any great benefit and may indeed simply be seen in a negative manner by major business occupiers.

If the Scottish Government is concerned about out of town ratepayers having an unfair advantage over town centres then the answer must surely lie in the manner of the rating assessment methodology applied to these respective types of ratepayer, rather than in further rate supplements which are very likely to capture a large number of ratepayers who are probably not the intended target of the Barclay review.

We recognise that these are not straightforward issues for the government to address but we do feel that rather than taxation measures there should be an emphasis on improving the town centre as a destination for businesses and their customers. And if there was a feeling of advantage for out of town retailers and other businesses in recent times then it is very clear from recent corporate events that the out of town sector is also facing some acute challenges. This is not unique to Scotland - but we do not think a further supplement will help to retain investment and maintain economic activity in our business, industrial and retail parks and neither do we see any likely upturn for town centres.

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

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

Any pilot scheme proposed to Ministers should be very clear on how it believes an out of town supplement will support those paying the extra tax to grow their businesses, retain investment and further economic development. And the assessment criteria should also be able to detail exactly how their town centres will benefit from the levying of such a tax, including supporting business growth, investment and jobs. If the proposed supplement is only intended to be used for some basic destination improvements, then that is more the case for a BID rather than an out of town supplement. So, if the proponents are unable to demonstrate a solid case based on these criteria, then the supplement should not be approved.

#### **Barclay recommendation 13**

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

##### **What level(s) should this civil penalty be set at?:**

We recognise that the Scottish Assessors have faced difficulty in obtaining information from ratepayers. This has been particularly acute in certain sectors, for example the licensing premises and this has no doubt contributed to certain unreasonable assessments.

The Scottish Government may wish to investigate the greater use of modern methods of data gathering. In view of concerns from ratepayers about the release of commercially sensitive information, the government may wish to look into block chain technology which is explicitly devised for the purpose of gathering data whereby privacy of the data submitted is essential. There are also some leading businesses in Scotland in this area of technology. The greater use of such technology may also led to greater efficiencies being achieved in the process of revaluation and assessments more generally.

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

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

The current process is antiquated and needs to move with modern times. Until this is achieved we see little justification for escalating the penalty regime and therefore at this stage, it should be fixed and relatively low.

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

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

As we said before, we do see a need for the greater use of technology in the rating process and this should affect the process for administering penalties and the related appeals process.

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

##### **Which organisations/ individuals should be required to supply necessary information to the Assessors, where applicable?:**

We do not see the case for expanding the current range of organisations or individuals the assessors can currently require information from.

#### **Barclay recommendation 16**

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

##### **What level(s) should this penalty be set at? :**

This should be nominal - councils can be inconsistent in terms of access or acknowledgement of changes of occupier.

The questions in the consultation seem to pre-judge the issue of whether 28 days is an acceptable period for notification. Council taxpayers have six months and our first question would be why there should be a difference between the expectations on a new council taxpayer as opposed to a non-domestic ratepayer? There are possibly more demands on the time of a new non-domestic ratepayer, particularly for SMEs - so we do not agree with the 28 day period.

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

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

No - nominal given the present uncertainty and inconsistency of ratepayers' experiences with notifying a change of occupier.

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

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

No comments.

**12 Should this be a mandatory penalty or one that the Council has discretion over?**

Has discretion over

**Barclay recommendation 18**

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

**How should the debt recovery changes be communicated to ratepayers? :**

It will be important to ensure the systems of billing and notifications are improved to facilitate quicker enforcement, as well as better communication of the need to pay rates while potentially still in dispute over the bill itself. Repayment must be expedited if there is to be a greater expectation of debt recovery.

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

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

Yes, Councils should retain discretion. We do not want to see a business close because of a dispute over its rates Bill.

**Barclay recommendation 19**

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

**How should this change be communicated to ratepayers? :**

This aspect of the Barclay recommendation process is perhaps more complex than at first assumed. There will often be case-by-case discrepancies between properties that might appear to be like-for-like in a given area. Therefore we are not convinced that a change in assessment for one property should automatically trigger similar changes for other ratepayers.

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

**Do you have any points about the change to allow valuation appeals to increase? :**

We recognise the government's concern with the current situation whereby an Appeal is a win only situation for the ratepayer (unlike in England). However, this does reinforce our concerns about changes to assessments not triggering wider scale assessment changes for other ratepayers that may not be appropriate but, if enforced, lead to considerable hardship while consequent appeals and appeals for discretionary adjustments are processed.

We note the government's concern that the current 'win-only' Appeals system leads to more appeals being submitted than might otherwise be the case. Whatever the reality of this concern, we believe that the wider systems of information engagement with ratepayers, their advisers and the Appeals process reforms (transfer to the Tribunals) must be improved in line with any move towards up/down Appeals outcomes. This would fit the proposed timescales of the Barclay Implementation process and while ambitious, we believe the package for reform of Rating Appeals and associated revaluation processes are achievable.

**Barclay recommendation 20**

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

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

The assessment of whether avoidance is actually being undertaken needs to be based on more than public sector interpretation. Any GAAR tribunal must be supported by independent experts as the cases will often involve complex issues of valuation and business process. However, as with other taxes, the GAAR may be invoked on a case by case basis where there are appropriate concerns, rather than see wider legislative changes that can inevitably inadvertently catch ratepayers who are not undertaking activity that might be deemed as rates avoidance.

**Barclay recommendation 21**

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

**How do we raise awareness of this change among ratepayers?:**

Rating advisers and professional/industry bodies will be a useful medium for raising awareness, including SPF. The annual rates bills are also a useful means of ensuring ratepayers currently in receipt of empty property rate relief are aware of this change in legislation.

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

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

We would repeat our views aired on many an occasion that commercial landlords generally like to receive rent - it is rather crucial to their ability to trade as an ongoing business. For landlords generally there is not an incentive to seek empty property rate relief rather than rent. Where this is done it is because of market failure not a desire to avoid taxes. The bigger problem is the fact that the government 'rent' (i.e. rates) is at times greater than the actual market rent!

**Barclay recommendation 22**

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

Yes

**21 If your answer to question 20 is yes, under what circumstances should this discretion apply?**

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

The discretion is best applied by a local authority who will know their areas intimately. Seasonal and environmental (weather) based discretion are the immediate suggestion but ultimately we believe this legislation should be applied by the people best placed, and that is the local authorities.

**Barclay recommendation 24**

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

**How should independent schools with exceptional circumstances such as specialist music schools be treated?:**

No comments other than to suggest there should be parity for independent schools supporting children with additional support needs with those who do so in the public sector. There may be a case for apportionment based on this principle.

**Barclay recommendation 25**

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

**How should active occupation be defined? :**

It would be very difficult to prove active occupation as suggested above if genuine cases of occupation are not to be unfairly treated for the purposes of SBBS as opposed to EPR. We suspect the reality is that this must be assessed case by case and subject to GAAR where a local authority does have serious misgivings as to the intent behind an active occupation of a premise.

**Barclay recommendation 26**

**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?**

**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?:**

We do not agree with the recommendation that vacant listed buildings should be restricted to two years of empty property rate relief. This restriction is too short a period and is based on unrealistic expectations of the ability of even the best resourced property developers to turn around a vacant and listed empty property. It would not be unusual for a developer/investor to need two years to simply be in a position to submit a planning application and associated consents for a listed building. There will be frequently be hard to treat circumstances such as asbestos removal for example. The developer will face additional demands such as Heritage Impact Assessments and potentially significant building challenges seeking to build properties built for a different era into line with modern regulatory and occupier expectations (lifts, energy efficiency, lighting and insulation etc). These proposals therefore take no account of the additional complexity of bringing listed buildings back into use.

A number of our members in the sector have stated that if there had not been relief from empty property rates for listed buildings then they would simply not have invested or started in such buildings. Given the substantial number of such buildings in need of occupation in Scotland then we see this a potentially damaging blow to the sector, to the economy and in fact to the buildings themselves which may end up being demolished if they cannot be retained for good purpose.

If the government are determined to proceed with abolishing long term relief for vacant listed buildings - then they must recognise the added complexity associated with heritage based investment and development and support a much longer period of 100% relief. This period of relief should be no less than four years and ideally five years.

Neither do we feel this an area for uncertainty and therefore we do not support local discretion and would propose that a time limit is set by legislation.

**Barclay recommendation 27**

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

**How should affordable/ community sports facilities be defined?:**

Clearly it is anomalous if successful and economically thriving facilities are not contributing to the business rates pool as other businesses are required to - but the emphasis should be on encouraging participation and engagement by communities in their local sports facilities and this is perhaps best supported by local authority knowledge and discretion.

**Barclay recommendation 30**

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

**How should commercial activity on parks be defined? :**

We would encourage flexibility on both assessing and defining commercial activities in public parks. There may well be pressure on local authorities to revise downwards their rental or license charges for potential ratepayers who fall under this category. That said, if a commercial entity outside of a local authority park or

facility is paying rates and a competitor is freely trading without such a burden, then in itself this is a question of fairness. The local authority/assessors should seek to be proportionate in any charges however, commensurate with the scale of trading activity undertaken by ratepayers in a local authority park and this may require a new category for the SAA to establish.

## About you

### What is your name?

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### Are you responding as an individual or an organisation?

Organisation

### What is your organisation?

**Organisation:**

Scottish Property Federation

### The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## Evaluation

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

### Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

**Please enter comments here.:**

### Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

**Please enter comments here.:**