Overview

The National Non-Domestic Rating ("Business Rates") appeals system is broken, with businesses often waiting years for appeals to be settled. In the 2013 Autumn Statement George Osborne took the unprecedented measure of setting the Valuation Office Agency (VOA) a target for clearing the backlog. This was a short term measure dealing solely with the backlog which was certainly unacceptably large. There are estimated to be around 300,000 appeals currently in the system.

One of the weaknesses of the current system is that many appeals are in effect fishing expeditions. Businesses routinely appeal when they take on new premises on the basis that there is a real possibility that they can negotiate a reduction, and as they will often hire a rating specialist on a “no win - no fee” basis they are no poorer if their appeal fails. Measures solely designed to reduce the number of appeals do not deal with the underlying problem.

The government is seeking to reform the system through the Enterprise Bill and the measures outlined in its consultation paper Check Challenge Appeal – Reforming Business Rates Appeals.

We agree with Government that businesses need to have a better understanding of how their premises have been valued in order to have confidence that the correct amount of tax is paid, and support reforms that give rise to savings in time and resource for all stakeholders.

However, along with a spectrum of bodies representing businesses, property owners and rating practitioners, we are extremely concerned that the proposed reforms will make the system less fair, less transparent and harder to navigate, all of which is contrary to the laudable objectives of the bill: to stimulate economic growth and encourage enterprise.

Business Rates are an ‘input’ tax and therefore a fixed cost to a business. The Rateable Value (RV) of a business’s premises that is used to calculate the liability represents the VOA’s opinion of a rental value based on evidence sourced by the VOA of a number of commercial properties which they regard as comparable having regard to proximity, similar size, condition and general attractiveness. It is important to stress that the business ratepayer will almost always have no idea how the VOA has arrived at its conclusions.

Business Rates are the only mainstream business tax where the liability is not based on a measureable ‘output’ of production, that is known to, and therefore quantifiable by the taxpayer.

The effect of S25 and Check, Challenge, Appeal

At a conference on 22 October 2015 the DCLG’s representative stated that the business ratepayer is purposefully excluded from s25 as being a party to whom the VOA can disclose relevant information. This is undemocratic and the detail of the consultation is alarming. Particularly:

- Without amendment to s25 businesses will have no right of access to the evidence used to assess their premises’ RV – this is crucial to allow the ratepayer to understand how their assessment has come about and thus give them confidence their bill is correct.
- The proposed three-stage process is unnecessarily long, lasting potentially 34 months before the conclusion of the first two stages – this delays rebates and harms businesses’ cash flow.
• Ratepayers (or their agent) will be obligated to make a comprehensive, evidence-based case as to why their premises RV is wrong – with no reciprocating requirement on the VOA to justify its assessment.

• The VOA is to be the ‘judge and jury’ as to whether a ratepayer’s challenge is compliant – This is an extraordinary position for DCLG to take. It is wholly undemocratic. It essentially means that in order to dispose of appeals the appellant has no right to even see the evidence on which the VOA has arrived at its verdict. It strikes at the heart of our democratic system and the fundamental human right of the citizen to know the evidence on which government is disposing of his or her case. If this were happening in a banana republic our government would no doubt shout its objection from the rooftop.

• Valuation Tribunal for England (VTE) hearings will no longer be free – this is an increased cost to businesses.

• At the Tribunal the appellant ratepayer will be constrained to the evidence made in his original challenge, by which time it could be at least 34 months old. Fresh evidence, including that generated by the VOA, will be prevented from being introduced into proceedings – this means that both the ratepayer’s and VOA’s expert witnesses cannot comply with their overriding duty of assisting the Tribunal with all relevant evidence and would bring the system into disrepute.

• It is proposed there is no longer to be a right of appeal to the Upper Tribunal (Lands Chamber) (UTLC) on matters other than points of law - as RVs are opinion-based and the VTE comprises lay, unpaid members, recourse to the UTLC must remain.

The primary statute concerning business rates appeals is the Local Government Finance Act 1988. Section 25(1) of the Enterprise Bill (formally s22 at earlier readings) will insert a new s63A into the LGFA headed “Disclosure of Revenues and Customs Information”, whereby HMRC/VOA may disclose information to a “qualifying person”. The Earl of Lytton tabled an amendment in the House of Lords whereby “a ratepayer for a hereditament” is a party to whom the VOA can disclose information.

Case Study

We are currently advising a business ratepayer whereby at the hearing the VTE accepted the VOA’s hearsay evidence and dismissed the appeal. We appealed to the UTLC and a hearing is pending. The VOA has now disclosed the documentation to which his hearsay evidence related and this has changed our position. Under the new proposals, an appeal would not be permitted to the UTLC as the case does not concern a point of law.

Action Required

As it currently stands, the proposals by the Government will not address the underlying issue with the broken rating system, and the high number of appeals will not alter. All that will change will be the name – rather than ‘proposals’ they will be called ‘challenges’! Ratepayers will continue to wait significant periods of time for a correct assessment on their property and the system will continue to fail both ratepayers and local authorities.

We urge MPs to restore fairness and prevent further damage to the business rates system by ensuring business ratepayers are able to access the evidence used to assess their premises’ RV.

The proposals contained in the DCLG’s consultation are too important to be consigned to secondary legislation and we will be seeking an amendment at committee stage.
Conclusion

It would appear that the sole objective of the proposals is to make it more difficult for ratepayers to ascertain whether they are assessed fairly, to reduce appeals (via a mistaken belief that the number of challenges will be lower than currently received) and to protect the tax base.

Most appeals that the VOA currently receives are made with the intention of ascertaining the information used to assess the RV of premises and understand how they have used that information to come to their opinion of value. A rating assessment is just that: an opinion of value, it is not a straight mathematical calculation. A degree of openness would therefore reduce the number of challenges and enable these to be resolved more quickly.

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