

Business Rates Briefing – February 2019

Further to our last Business Rates briefing in December we set out further information on developments in the rating world, primarily in England, this month, which hopefully is of interest.

England

- **Business Rates Information Letter (BRIL 1) & Confirmed Multiplier for England 2019/20**

National Multiplier – England – 2019/20: The Ministry of Housing, Communities & Local Government (MHCLG) have issued the first BRIL for 2019 to Billing Authorities – attached.

MHCLG confirms that the Multiplier for England will be as per the Chancellor's Autumn Budget at 50.40p (49.1p for small hereditaments below RV £51,000). Our systems had already been updated at these levels pre-Christmas so there will be no need to amend our budgets if these have been previously supplied as part of our rate payment management mandate.

Retail Relief being centrally funded: BRIL 1 also confirms that the new Retail Relief scheme, which takes effect from 1/4/2019 (and continues into 2020/21), will be centrally funded. It is expected that following Local Authority software upgrades relief should be applied to bills "*without the need for rebilling*".

Rating Agent approaches: There is a section within BRIL 1 flagging the actions of certain rating agents that approach ratepayers to seek the relief and the government clearly does not welcome such moves. That said, the relief is subject to state aid and it is not certain how Billing Authorities will deal with this issue – with previous reliefs many BA's have required ratepayers to complete State Aid declarations before they will grant it. It is possible this time that the relief will be applied automatically and ratepayers may need to contact BA's if they have received too much within the de-minimis limits - an almost certainty with larger portfolios. But not all ratepayers are comfortable negotiating their way through a myriad of different Billing Authorities' procedures which are often inconsistent in their approach. This aspect doesn't seem to attract any recognition within the BRIL.

As such there is no easy answer to the issue around how the relief is administered around the state aid requirements. The BRIL simply states "*we encourage local authorities to do all that they can do to ensure that businesses are aware of any reliefs for which they may be eligible and understand how to access that support in the easiest way possible*"

BRIL1 finally covers off one further element:

Explanatory Notes to Rating Bills – The BRIL also attaches updated Explanatory Notes that are published under the "Amendments to Council Tax and Non Domestic Rating Demand Notice Regulations 2003". These are the notes that BA's should enclose with rates bills. They give a useful, albeit simple four page guide to Business Rates charges and definitions in England that is a handy aid memoire. There is a further annexe of Explanatory Notes for Special Authorities that covers similar ground.

- **Treasury Select Committee Inquiry launched on “Impact of Business Rates” in England**

Impact of Business Rates – In a welcome move, the Treasury Select Committee – which is recognised as one of the more influential Select Committees - has launched an inquiry into Business Rates to scrutinise how Government policy has impacted business. The Inquiry promises to be wide ranging and gives the opportunity for Stakeholders to advise the Committee on the shortcomings of the present Business Rates system in England and the wider impact of business rates as a tax.

In terms of what has been published:

Scope of the inquiry: *The Committee will examine how Business Rates policy has changed, including Business Rates retention, alternatives to property-based taxes, such as the proposed digital services tax, and how changes to Business Rates could impact businesses.*

Terms of Reference: *The inquiry will cover the following:*

The impact of changes in Business Rates policy since 2017 on businesses, in particular:

- *The changes in reliefs and allowances*
- *The ability of businesses to pay*
- *The relationship between Business Rates and the behaviours it drives in business.*

How the current Business Rate system measures up against the following pillars of good tax policy:

- *Fair*
- *Support growth and encourage competition*
- *Provide certainty*
- *Be coherent.*

The economic justification for a property-based business tax:

- *The impact of Business Rates on rental prices*
- *The impact of Business Rates on property prices*
- *Alternatives to property-based business taxes, such as the proposed digital services tax*
- *The problems associated with property-based business taxes*
- *The impact of changes (proposed and actual) of Business Rates on Local Authorities and Councils, and the High Street.*

Commenting on the launch of the inquiry, Rt Hon. Nicky Morgan MP, Chair of the Treasury Committee, said:

“Many high street businesses are struggling to remain competitive. It has been estimated that 10,000 shops will close this year. Unless action is taken, closures could continue and job losses may soar. Business Rates can represent a substantial financial burden on the high street. The Treasury Committee is therefore launching an inquiry today into the effectiveness and impact of these rates on business. We’ll examine how the current system is working and consider whether an alternative system, for example a land-value based tax, may help level the playing field between retailers. At the end of the inquiry, we’ll make a series of recommendations to Government on the fairness and effectiveness of the current system, and how it could be improved.”

- **Treasury Select Committee Inquiry launched on “Impact of Business Rates” in England**

GL Hearn Comment:

This is a welcome move and we very much hope that the influential Treasury Select Committee will “lift the lid” on many of the inequities of the current business rates system in England and make firm recommendations for reform that the government will respect and implement. Of all the Select Committees that could have looked into such matters, this one has real “teeth” potentially, especially with Nicky Morgan at the helm. Whilst the commentary from her refers primarily to the Retail Sector – which undoubtedly feels the pain of the current system more than most, given the current economic uncertainty and poor trading conditions – the Inquiry is by no means limited to retail. We consider that in fact most ratepayers will have some issues with the current system, even if in respect of some of the key unfairness such as downwards transition, the CCA appeal system or frequency of revaluation and downgrading of VOA resource.

Whilst the specific terms of reference don’t mention Check Challenge Appeal (CCA), clearly this is an area that could (and should) be flagged in terms of the second strand of the Inquiry - How the current Business Rate system measures up against the basic pillars of good tax policy. Negative comments could no doubt be levied in respect of all such metrics as to where CCA falls down.

One further comment we have is that the Select Committee’s terms of reference refer to “the impact of changes in Business Rates policy since 1st April 2017” but clearly some of the fundamental issues of the system pre-date this period and it would be a great shame if these matters were not flagged and tackled as part of this Inquiry. One example would be the requirement in legislation – that dates back to 1988 - for there to be a transitional scheme in England. Whereas the government’s choice of transitional scheme for 2017 (and the political tampering that is perceived to have taken place around it) is of particular concern for many ratepayers; whether this could be described as a change of policy post 1/4/2017 is a moot point.

Other matters, such as the impact of state-aid de-minimis rules, may also be worth flagging - in terms of how these provisions significantly blunt the impact of available reliefs and exemptions (some of which have come into effect since 1/4/2017) for many ratepayers. The issue of state-aid and its application is clearly not a change of government policy and therefore such considerations may fall outside the scope of this Inquiry but it nevertheless impacts the effectiveness of reliefs and exemptions all the same and means that headline announcements from the Chancellor of targeted relief from business rates mean little to many ratepayers..

There is still plenty for the Select Committee to “get its teeth into” and we suggest that all shortcomings with the current business rates system in England ought really to be flagged in submissions made - irrespective as to whether they have arisen purely from changes in policy since 1/4/2017. The government’s decision to essentially stick with the current system, albeit to bring forwards revaluations onto a three yearly cycle from 1/4/2021, should hopefully be a catalyst for a much wider debate via this Inquiry.

A link to the Treasury Select Committee web page is as follows:

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/inquiries1/parliament-2017/inquiry3/>

The deadline for making a submission is 2 April 2019 and below is a link to a guide provided to those making written submissions.

<https://www.parliament.uk/get-involved/have-your-say/take-part-in-committee-inquiries/commons-witness-guide/>

We will be drafting our own submission to this Inquiry and would be pleased to assist you with your own submission, should you wish to make one.

Case-law Update:

- **Supreme Court overturns Court of Appeal on method of Completion Notice service**

The Supreme Court has yet again overturned the Court of Appeal on a Business Rates case – this time as regards what constitutes correct service of a Completion Notice

A Completion Notice had been served on “the owner” by Westminster CC via a receptionist in the building who was employed by managing agents and not authorised to accept service but who nevertheless e-mailed a copy on - such that the contents ultimately found their way to the Appellant owners of the building.

The VTE had originally determined that the Notice had been invalidly served in accordance with requirements of the Local Government Finance Act 1988. As a result, the owner’s proposal - seeking a deletion of the RV for the property (entered in the List as a result of the Completion Notice) was upheld. The VTE reached this conclusion because the owner’s name did not appear on either the Notice itself, or the envelope containing the Notice. Given that the Notice was deemed to be invalid, the resulting entry stemming from it should not have been made in the VTE’s judgement.

The Upper Tribunal had overturned the decision of the VTE only to have their decision, in turn, reversed by the UK Court of Appeal.

Upper Tribunal & Court of Appeal Decisions: The UTLC essentially decided, in disagreeing with the VTE, that the Notice must be treated as valid because it had ultimately reached the party on whom it was being served who were then able to act on it. The rules of service under the Local Government Finance Act were not so prescriptive that such a route of service could be excluded. The Court of Appeal disagreed, however, on the basis that that simply leaving a notice with a third party, not authorised to accept service of documents (in this case the building receptionist), could not constitute proper “service on the owner” under the legislative requirements set down.

This “yo-yoing” of decisions has become a feature of recent Business Rates cases and the UKI case is no exception.

The Supreme Court therefore had to determine who was correct given the circumstances of service in these particular circumstances reflecting the following arguments:

- The BA contended there was nothing in the legislation to exclude electronic service and the end result was the same as conventional service by hard copy.
- The Owner contended, inter alia, that the notice had not been properly served by the billing authority, because the actual service was effected by a third party.

The Supreme Court held that the means by which a document reached the intended recipient was not “*wholly immaterial*” as to whether or not it had been properly served, but the proper test was whether the BA “caused” the notice to be received by the owner. In other words, was there was “*a sufficient causal connection between the authority’s actions and the receipt of the notice by the recipient*”. In this case they held there was. This interpretation cannot be extended to embrace all situations where ultimately the intended recipient has “*come to know*” of the contents of the notice. There needs to be actual receipt of the notice, and a sufficient causal link with the actions of the council, and that was the case here.

The Electronic Communications Act 2000 was enacted in the light of courts accepting that electronic service by fax was good service. The provisions of the Act were intended to extend the use of electronic communication. Given there was nothing in business rates legislation that would limit the effects of that Act it followed, accordingly, that “*under general principles, and on the particular facts of this case, the notice was successfully served*”.

- **Supreme Court overturns Court of Appeal on method of Completion Notice service**

GL Hearn comment:

This is an important case and means that the strict requirements hitherto thought to exist as regards the service of Completion Notices are now unlikely to apply going forwards, notwithstanding some of the caveats mentioned by the Supreme Court. If a Notice is received by a person who is not authorised to receive it then the Notice should essentially be returned to sender otherwise it may be deemed that forwarding it on constitutes effective service. But what is almost certain is that BA's will start to change their methodologies and may increasingly use electronic means of service following this decision. Given that a 28 day period exists for appealing Completion Notices it will be even more important to ensure that Notices received are dealt with promptly and seeking invalidity on the back of a "defective service" argument may become more difficult.

We hope that the above update is helpful and if you have any queries or would like further clarification of the matters raised please do not hesitate to contact the following or your usual GL Hearn contact:

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