

## Response ID ANON-79J9-VKJW-N

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

Submitted on **2018-09-13 14:20:09**

### 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?:**

General points (which there is no provision to include elsewhere in this Consultation Response)

a) As per our emails to NDR@gov.scot of 4th and 11th September, and your reply of 11th September, this Consultation Response is the draft response of Scottish Borders Council pending approval of the Council's final response at a meeting of full Council on 25th September. We confirm that we shall submit our final response on or shortly after 25th September.

b) It is understood that Scottish Government has confirmed that those financial implications which arise in Local Authorities due to the fact that councils are rate payers (such as, changes to empty property relief, commercial activity within parks or sports relief) will not be covered within financial memoranda. In view of this, subject to the scale of the issues involved, their implications will need to be included in discussion between CoSLA and the Scottish Government as part of the overall local government budget settlement.

Turning to the questions specifically asked within the Consultation, we respond as follows:

1. Encouraging business development is desirable, but there are potential resource implications in having to verify occupation. The Council's preferred approach would be for properties to be placed on the valuation roll as now and for ratepayers to claim an exemption in relation to expanded, improved or new build properties. In effect, placing the application requirement on rate payers would eliminate the need for resources to verify occupation.

### Barclay recommendation 2

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

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

The Council is generally supportive of the proposal to move to 3 yearly revaluations. However, the Council has concerns with respect to the correlation between the requirement for revaluations and the number of appeals. Simply put, a change from 5 yearly to 3 yearly valuations is only likely to work satisfactorily, if there is a very significant reduction in the 80 000 annual appeals which is currently typical. In relation to the 2025 revaluation, the tone date will be 1st April 2024. This means that Assessors will have 6 months to undertake a revaluation when previously they would have 2 years. Should a change to 3 yearly revaluations be approved, we believe that transitional arrangements will be needed to ensure that appeals can be processed effectively within a considerably more limited timescale.

It should also be noted that, while a key rationale for 3 yearly revaluations is greater ratepayer confidence in rateable values, this moves away from the greater stability and predictability for Council's budgeting requirements offered by the longer 5 year cycle.

### 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.:**

Please see our response to question 4. Subject to Scottish Government's ultimate approach, if the new power is to be enacted, then the new power should be fully tested by means of pilot councils having appropriatediscretion. Establishing broad safeguards should mean it is not necessary for ministers or Parliament to set out regulations for each scheme.

Any broad principles drawn from the experience of pilot schemes must not prejudice the viability of rural out-of-town businesses. Furthermore, it should be recognised that policy incentives have been introduced to encourage online businesses in rural areas, so care is needed to ensure any new policy approach does not run counter to efforts to stimulate such businesses.

#### 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)?:**

The root problem which this proposal seeks to address is the relative competitive disadvantage of businesses on the high street compared to those operating largely or exclusively online. The rationale for this proposal, therefore, is that online businesses are not being properly valued. While the Council is sympathetic to the intent, it has some concern as to whether the proposed approach is the best available. It appears anomalous to try and address a national and international problem using a fixed assets based tax in Local Authority areas. Rather than placing the issue on councils, we consider that the following options might be considered:-

- i. Scottish Government should establish a definition for online businesses which would have national application for rating purposes.
- ii. An online sales tax should be introduced. We acknowledge this would require approval of UK Government. Perhaps the Scottish Government could initiate

further discussion with UK Government, noting the UK Chancellor's announcement in the Spring Statement (13th March) that he planned to bring forward the next business rate revaluation and move to 3 yearly revaluations.

## **Barclay recommendation 13**

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

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

The Council considers that the move to a civil penalty will be problematic. While the proposed change from a criminal penalty to a civil penalty may acknowledge the reality of criminal sanctions rarely being contemplated in such cases, the Council has concerns that the change:

- i. will make the non-provision of information more likely
- ii. will significantly increase the administrative burden (in respect of pursuit and enforcement) to the extent that the value of individual claims is likely to be substantially undermined.

### **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 penalty should be proportionate to business banded rateable value, reflecting the potential loss to tax base.

### **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?:**

Responsibility should reside with the person responsible for raising the bill i.e. the Assessor.

### **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?:**

The Council concurs with paragraph 4.69 of the Report of the Barclay Review that: "In order to facilitate better information provision, the powers of the Assessors should be extended to allow them to request information from a wider range of bodies and individuals to help inform accurate valuations. This list should be extended in consultation with the Assessors but may include architects, builders, construction firms etc."

## **Barclay recommendation 16**

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

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

We repeat our answer to question 5.

### **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? :**

We repeat our answer to question 6.

### **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?:**

11. Responsibility should reside with the originator i.e. the Council.

12. With reference to question 12 below, and our answer of 'mandatory penalty', we would add that any discretions should be set out in legislation to ensure consistency country-wide.

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

Mandatory penalty

## **Barclay recommendation 18**

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

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

This should be communicated as part of the bill process and continue during the operation of the process as currently.

### **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? :**

There should be discretion, reflecting the advantages of the Council being able to secure payment arrangements, and make judgements about the assets available to ratepayers/debtors in pursuing rates liabilities and thereby meeting its obligations of Best Value.

## **Barclay recommendation 19**

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

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

It is unclear what information is being sought through this question. However, any changes initiated at national level should be communicated at national level and cascaded through councils as necessary.

### **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? :**

Currently risk free. We support arrangements where either an appeal is successful or the Assessor's view is accepted. If information is brought to attention during an appeal, it is entirely logical and appropriate that the Assessor or Appeals Committee can increase the rateable value of the subject property.

However, this change gives rise to a number of subsidiary questions. Most obviously, if you appeal and your rates are increased, does that give a fresh right to appeal? To permit this would seem self-defeating in seeking to deliver a stable regime with significantly reduced numbers of appeals. A new determination clearly should give rise to an appeal, but we suggest there should not be a right of appeal where the increase directly follows from an appeal (where the relevant evidence will have been considered).

Thought should be given to whether the appeal process should attract a fee. To ensure that meritorious claims are not discouraged (acknowledging the risk of higher rates following an appeal may also have a cooling effect) the fee could be refundable on a successful appeal, or payment required only if the appeal goes to the appeals committee.

In considering these options, the practicalities of the appeal process need to be carefully examined to ensure that any changes drives the right behaviour, securing a system which , on the one hand, is stable, resilient and predictable, and on other is fair and has high credibility for ratepayers.

## **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? :**

Generally agreed.

At present, nationally, legislation does not adequately deal with the issue of Phoenix companies, created as a device for avoiding liabilities. Ministers should contemplate measures to address the issue.

## **Barclay recommendation 21**

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

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

Scottish Government should make the change known through its general dissemination of information regarding the changes it proposes on the back of the Barclay Review. Councils can play a part in reinforcing the change, but as it has national application, logically prime messaging would come from central government.

### **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?:**

No.

## **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?:**

20. Yes, there should be – e.g. in the case of landslip, or flooding. Glasgow School of Art fire illustrates a nationally prominent example of the importance of discretion.

21. Please note – there appears to be an error in the text of Question 21. We believe it should say: "If your answer to question 20 is yes, under what circumstances should this discretion apply?"

Please see above. We foresee difficulty in assessors/councils being able to validate evidence of an intention to let for 140 days in the year and evidence of actual letting for 70 days. We suggest this might be addressed by a declaration by the owner/ratepayer, with an appropriate sanction to be applied if it emerges that the declaration was inaccurate. Additionally, of course, it would result in the property in question being placed back on the council tax list.

## **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?:**

Other reliefs should apply such as Disabled Persons' Relief. It is not clear why schools ineligible for other reliefs should be treated differently from the proposed approach to independent schools.

## **Barclay recommendation 25**

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

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

Property needs to be void of contents, or where plant and equipment is present, separated from power. Beyond a simple straightforward definition, whether the property is in active occupation (and eligible for relief) should be a matter of discretion/judgement for councils.

## **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?:**

Yes, there should be discretion. Local circumstances are potentially highly variable, and it is prudent to let them be judged on the basis of the evidence and local understanding without pre-emption.

It is also not clear what the rationale for a maximum 2 year period is. To set an arbitrary deadline is likely to be insensitive to the age, use and configuration issues which inhibit a building being brought back into active use. Where such characteristics are present, furthermore, there is limited reason to expect that such issues will be less significant beyond 2 years than they are within 2 years. Lastly, it should be noted that national policy on listed buildings and constraint on use or change has implications for councils because of the disproportionate number of listed properties they own.

## **Barclay recommendation 27**

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

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

The definition of a 'community transfer body' pursuant to section 77 of the Community Empowerment (Scotland) Act 2015 is suggestive of the definition that should be used in this case. The object of the exercise is to distinguish between sports clubs operated essentially on a not-for-profit basis be they community controlled, publicly owned or ALEO, from private/commercial sports clubs where profit or restricted membership are typical features.

## **Barclay recommendation 30**

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

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

Of all the proposals within this Consultation, this proposal is the one which causes the Council greatest concern. It is essential that commercial activity is defined in such a way that it does not prejudice the ability of councils to deliver services to the public in a cost effective and sustainable way. Charging for use of public toilets, the use of sports and other facilities provided by the Council directly or indirectly through its ALEO Sport and Culture Trust illustrate activities which could be caught by a definition which is not judiciously worded. Taking facilities at the Council's Wilton Lodge Park, Hawick, as an example: it is legitimate that rates apply to the privately operated café, but not to other facilities such as the band stand or museum. The key distinction lies in whether the activity and the asset are operated with the intention of generating a profit. Taking another example, revenue generated by 3G pitches to meet lifecycle costs reflects the integral nature of charging in service delivery. As noted, to permit activities like this to be caught within a definition of commercial activity would do serious injury to councils' future planning, budgeting and the viability of a range of services essential to the people in our communities, as well as likely to prejudice councils' willingness to invest in community facilities such as sports pitches or parks.

## **About you**

### **What is your name?**

#### **Name:**

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

Organisation

**What is your organisation?**

**Organisation:**

Scottish Borders Council

**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?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**

The Consultation largely asks those question which we would expect, but no scope is provided for making additional points, which we regard as relevant to the wider context of Non-Domestic Rates and the potential financial impacts of the consultation proposals.

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

Slightly dissatisfied

**Please enter comments here.:**

The primary reason for the use of Citizen Space being a less than fully satisfactory experience is its formatting limitations. This prevents editing of the response to highlight particular points of text.