Ministry of Housing, Communities & Local Government

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Clive Betts MP
Chair, Housing, Communities and
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House of Commons
London
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Dear Clive,

0 8 MAR 2018

Draft Non-Domestic Rating (Property in Common Occupation) Bill

Thank you for your further letter of 26 February regarding the above Bill, following my letter of 19 February.

Since I wrote, the consultation period on the draft Bill has closed and I am pleased to say we have received 53 responses. This builds upon the stakeholder engagement we undertook with the rating sector throughout the consultation period. We are now considering the results of this consultation exercise.

I understand your concerns that the consequences of the change in VOA practice following the Mazars decision and the provisions in the Bill to restore the previous practice have not been fully quantified. In our consultation document and in my letter of 19 February I explained the constraints which prevent us from fully analysing these impacts in isolation from the many other changes that happen to properties on the rating list. I have set out the Government's thinking in more detail in response to your further questions in the Annex to this letter. I have grouped some of these questions where the response covers more than one of them.

Thank you again for raising these important points.

RISHI SUNAK MP

Q6. Did any local authorities (LAs) respond to your recent consultation? If so, to what effect?

1. Twenty five local authorities responded to the consultation. All twenty five agreed that the draft Bill reinstated the previous practice of the VOA (question 1 of the consultation) although four qualified this support with suggestions as to how the Bill could be improved (question 2).

2. As regards implementation on the 2010 rating list, nineteen local authorities supported the proposed approach to implementation through a new right of proposal (question 3) and six disagreed. Twenty one agreed that the former 2010 list appeals process should apply for the 2010 list (question 4) and three disagreed. Concerns raised in relation to implementation on the 2010 list (question 5) were that the appeal system was too burdensome, the possibility of negative impacts on ratepayers, and that the VOA should be more pro-active in automatically restoring its previous practice without the need for an appeal. One respondent said that the Bill should not apply to the 2010 rating list.

3. As regards implementation on the 2017 rating list, twenty local authorities agreed that the VOA should allow a prioritised "check" on the 2017 list in addition to the VOA's normal duty to maintain the rating list (question 6) and four disagreed. Concerns in relation to implementation on the 2017 list (question 7) were again that the process should be automatic but also that the standard "Check, Challenge Appeal" process should apply to all ratepayers.

4. In addition, eight authorities said that the Government should compensate them for the loss of income as a result of the restoration of the VOA's previous practice. While this matter is outside of the scope of the consultation, the Government's position was explained in paragraph 40 of the consultation document and in paragraph's 4 to 7 of my response to you of 19 February.

5. Finally, some authorities asked that the Government fund the cost of administering billing and re-billing as a result of the Mazars decision. This is also outside the scope of the consultation. The Government considers that billing and rebilling administration costs arising from the Mazars decision is part of the normal cost of administering the business rates system and is already funded through the Cost of Collection Allowance. Nevertheless, the Government would welcome discussions with local government on this matter.

Q7. We request that you send us copies of all responses to the consultation.

6. We will send these under separate cover. We will publish a summary of all responses once we introduce the Bill.

Q8. How do you intend to monitor and report on changes in RVs which result from reversing the effect of Mazars?

Q9. What would be the aggregate fall in RV across the 2017 rating list as a result of reversing Mazars? What effect do you calculate this will have on LA rate revenues?

Q12. Have you considered which LAs might be most affected by any reversal of the effects of Mazars?

Q16. How many properties have the Valuation Office Agency revalued to produce a RV which is different to what it would have been apart from Mazars?

7. Paragraphs 8 to 11 of the Annex to my reply of 19 February explain that we are unable to say how much rateable values have changed due to the Mazars decision and how much from other factors. Further detail is provided below.

8. A typical example of a property affected by the change in practice following the Mazars decision would be a ratepayer who occupies, for example, three contiguous floors of an office block in common occupation. Prior to the Mazars decision the three floors occupied by that ratepayer would have been assessed as one hereditament.

9. Continuing this example, the VOA may have identified this property in the course of the exercise they undertook following the Mazars decision. This exercise ran from Spring 2016 to Autumn 2017. The property would have been flagged by the VOA as requiring a change due to Mazars. These flagged properties have been used to form the data included in the letter from the Chief Executive of the VOA to the Treasury Select Committee on 13 September 2017.

10. In the case of our example property, the VOA would have split the assessment from one into three and if necessary adjusted or removed the quantum discount from the valuation (see paragraph 10 of my letter of 19 February). This, in isolation, would have increased the overall rateable value across the now three assessments.

11. However, when looking at our example property, the VOA may have also identified other considerations which would also have needed to be reflected in the revised assessment. For example, they may have identified common areas which would have needed to be treated differently, they may have identified changes to the use of space in the office or they may have found improvements or other changes of which they were previously unaware. Changes such as these would have been made to the rateable value at the same time as the split of the one assessment into three but would not have been as a direct result of the Mazars decision and would not have been reversed as a result of the draft Bill.

12. Since a rateable value is the valuation of all attributes of a property in combination, the precise effects of the Mazars decision on any one valuation cannot be separated from any other changes without examining the detail of the individual case. Such information cannot be statistically derived by the VOA. In our example, the total rateable value of the three assessments for each of the three floors would have been different to the rateable value previously shown for the three floors combined but the VOA would need to re-examine the whole valuation to determine how much, if any, of that difference would be due to the loss of the quantum discount and how much due to other changes not directly related to Mazars.

13. It is also possible that our example property was identified by the VOA in the normal course of its work – either at the time of the Mazars exercise or since. In which case the VOA would still have corrected the assessment, splitting it into three and reflecting the other changes, but would not have flagged it as part of the review. As a result, all those

cases which are in part or in whole due to the change in practice following Mazars cannot be specifically identified by the VOA.

14. This is why, in relation to your questions 9 ,12 and 16, it is not possible to estimate or track the change in rateable value due to the Mazars decision and, therefore, nor is it possible to estimate the changes in rateable value which will result once the Bill has received Royal Assent.

15. In relation to your question 12, paragraphs 15 to 21 of the consultation document describe the impacts of the Mazars decision. We believe that the most significant of these impacts in financial terms is the loss of the "quantum discount" from rating valuations. This impact is likely to be concentrated in urban locations with concentrations of high value offices. Those authorities are likely to have seen the largest windfall gains from the Mazars decision and, it follows, will see the largest refunds once the Bill receives Royal Assent.

16. In relation to your question 8, the process for implementation of the Bill once it receives Royal Assent is described in paragraphs 33 to 39 of the consultation document. The VOA will be able to track those fresh appeals which are made on the 2010 rating list as a result of the Bill receiving Royal Assent. We expect these fresh appeals will, in part, give a reasonable guide to the impact of reinstating the previous VOA practice on the 2010 list. However, some amendments to the 2010 rating list after Royal Assent will be made as a result of existing and outstanding 2010 appeals, and, for the reasons given above, it will not be possible to track within those existing appeals the change in rateable value due to the reinstatement of the previous practice.

17. For the 2017 rating list, as we explain in the consultation document, the Royal Assent of the Bill will be reflected through the VOA's business as usual practice including Checks, Challenges and Appeals and the VOA's own amendments to the rating list. For the reasons given above, the VOA therefore expects that accurate tracking of the impact on the 2017 rating list of reinstating their previous practice will be difficult with the results being necessarily incomplete.

Q10. To avoid reducing overall LA rate revenue when reversing Mazars, will you provide for the multiplier to be changed to compensate for the lower total RV. Or will you compensate for the lower RV in some other way.

18. At the 2017 revaluation, as at each revaluation, the Government reset the multiplier to reflect the overall change in rateable value between the old and the new rating lists. The calculation of this adjustment for the 2017 revaluation was published on 9 March 2017 in Business Rates Information Letter (3/2017). A link is provided below.

    https://www.gov.uk/government/collections/business-rates-information-letters

19. The adjustment is made at the England level using a formula set in primary legislation and, in broad terms, adjusts the multiplier in line with the percentage change in rateable value between the old and the new rating list. The adjustment is based on the evidence available at the time and has not been revisited to reflect later changes to rateable values.

20. The change in practice following the Mazars decision and restoration of that practice following the Royal Assent of the Bill will, in principle, change total rateable values on both the 2010 and 2017 rating list. Therefore, reflecting these factors in the adjustment for the multiplier would not necessarily have led to a movement in the overall percentage change

between the two rating lists. In any case, in practice the numbers and resulting rounding in the setting of the multiplier are such that we do not believe the impact of Mazars could have had a material impact on the multiplier for 2017/18. Therefore, we do not consider that the multiplier set at the 2017 revaluation is lower than it would otherwise have been due to either the Mazars decision or the restoration of the VOA's practice through the Bill.

Q11. How will you ensure that tariffs and top-ups set in reliance on Mazars are adjusted so that reversing the effect of Mazars does not unfairly advantage or disadvantage any LAs? In other words, how will you check the levelling mechanism doesn't become a distorting one?

21. The adjustment to tariffs and top-ups following the revaluation is intended, as far as possible, to offset the change in rates revenue at the local level. It ensures that local authorities retain broadly the same rating income post-revaluation as they would have retained if the revaluation had not taken place. One component of the calculation of revised tariffs and top-ups (but only one) is the change in revenue from one list to the next.

22. The Mazars decision and changes made as a result of this Bill will have a similar impact on the value of both the 2010 and 2017 rating lists. Therefore, it makes little material difference whether the calculation of post-revaluation tariffs and top-ups had used the original values set in reliance on Mazars, or values reflecting the changes to be made as a result of this Bill. As a result, we do not believe that the restoration of the previous practice of the VOA would have had a material impact on the revaluation adjustment to tariffs and top-ups.

Q13. Are you confident the courts will accept that the floor of one hereditament forms the ceiling of another, regardless of voids? Similarly in relation to walls?

Q14. What is your (at least provisional) view as to how a void will be distinguished from a room? At what point does one become another?

Q15. What assessment have you made of whether a statutory definition of "contiguous" will introduce significant scope for litigation?

23. The objective of the Bill is to settle upon a definition of contiguous which reflects the previous practice of the VOA and provides certainty for ratepayer and the VOA. We of course hope that such a definition avoids the need for litigation.

24. The draft Bill does not explicitly define a wall as including a void for services and nor does it explicitly provide that a similar void may be present between the floor of one hereditament and the ceiling of another. Our concern has been that if we start to define a void then we risk failing to distinguish the void from a room or failing to capture all the circumstances in which a void would still be considered to be contiguous. That is why, as I explained in paragraph 13 of my letter of 19 February, we prefer instead to rely upon the common meaning of the term wall and the concept of the floor of one hereditament forming all or part of a ceiling of the hereditament above.

25. Nevertheless, several respondents have offered comments on these parts of the draft provisions and we are currently considering those and all other responses.

Q17. Why is it right to characterise LAs receipt of rates in accordance with the law as explained in Mazars as a "windfall"?

26. The practice of combining into one hereditament contiguous properties in the same occupation was accepted by the VOA and rating agents prior to the Supreme Court decision. Neither the ratepayer nor the VOA were seeking a departure from this rule during the Mazars litigation and the Supreme Court decision was unexpected from all sides.

27. It would therefore not be correct to view the outcome of the Supreme Court decision as just a court decision clarifying an otherwise uncertain area of the law. The Supreme Court decision led to a change in the established practice in the VOA and rating surveyors in a way which was both fundamental to the meaning of a hereditament and also unexpected. As such, it is reasonable to view additional revenues flowing from that change in practice as a windfall.