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Clive Betts MP
Chair, Communities and Local Government
Select Committee
House of Commons
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Dear Clive,

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

Thank you for your letter of 23 January regarding the above Bill in response to my predecessor's letter of 3 January.

The draft Bill seeks to address the consequences of a Supreme Court decision which resulted in changes in the way the Valuation Office Agency (VOA) assess property in common occupation. These consequences became known as the staircase tax. The Chancellor announced at the Autumn Budget that we would address the staircase tax and we of course want to move quickly to introduce the necessary legislation. Until we change the law ratepayers will still be liable for business rates based upon the current rules.

I appreciate, as a result of this urgency, that we have shortened the usual timescales for draft legislation. Normally we would move immediately to introduce a Bill in situations such as these but, due to the technical complexity of this matter, we felt it was essential to first consult upon draft provisions. This additional step has been widely welcomed by rating surveyors. In January my Department held two events with the Rating Surveyors Association and we continue to hold discussions with stakeholders to hear their views ahead of the consultation closing on 23 February.

To assist with your consideration of the Bill within this timetable, you asked us to consider five questions. These are addressed in the Annex to this letter.

RISHI SUNAK MP

Q1. Is it correct as a matter of policy to consider contiguous properties as one hereditament where they are in common occupation?

1. Prior to the Supreme Court decision in the Mazars case, the general rule was that two hereditaments in the same occupation and contiguous should form one hereditament. This had the benefit of following the practice in the market where occupiers may well take more than one contiguous unit of property and usually occupy them as a single unit under a single lease. The obvious example is of tenants taking contiguous floors of an office block. The change in practice following the Supreme Court decision meant that these individual units of property had to be separately assessed even where they were in the same occupation and contiguous.

2. Following the Supreme Court decision, and as the change in practice starting to be implemented by the VOA, stakeholders and rating practitioners increasingly called for us to restore the previous practice. In a joint letter to my predecessor in February 2016, all three professional bodies working in business rates (the Royal Institution of Chartered Surveyors, the Institute of Revenue, Rating and Valuation and the Rating Surveyors Association) called for the previous practice of contiguous units of property in single occupation to be treated as one to be restored. They described that previous practice as widely understood and as ensuring that rating assessments reflect the value to the occupier and as such equity between similar ratepayers. That is the practice which we seek to restore through the draft Bill.

Q2. How will the draft Bill be implemented?

3. As you note, we have explained in the consultation document that the change in law brought about through the Bill will be implemented by the VOA who will amend the rating list. The Bill will change the law retrospectively to 1 April 2010 but from April 2018 the VOA will not be able to amend the 2010 rating list other than as a result of an outstanding appeal. To resolve this we will introduce a new right of appeal on the 2010 rating list for those affected. Our early discussions with stakeholders have shown widespread support for this approach although we recognise the need to provide more detail on the precise terms of this new right of appeal. We intend to prepare draft regulations for discussion with the sector alongside the passage of the Bill. We consider the existing powers in section 55 of the Local Government Finance Act 1988 to be sufficient for these purposes but we will review the position before introduction

Q3. Does the Government propose to ensure that no local authority's funding is reduced in respect of any period before the draft Bill comes into force, as a result of the draft Bill? If so, how?

4. The change in practice brought about by the Court ruling provided an unexpected windfall to local authorities. By legislating to reinstate previous valuation practice, the government is giving this windfall back to ratepayers. Accordingly, no compensation will be payable to local government in respect of this measure.

5. For example, the VOA may have, following the Supreme Court decision, amended a rating assessment with effect from 1 April 2010. This may, in turn, have increased the charge for that period and the ratepayer will then have had to pay more in business rates. The Bill will allow for the previous practice to be restored from 1 April 2010. Following

Royal Assent the rating assessment can, therefore, be amended back to 1 April 2010 to reflect the practice prior to the Supreme Court decision. The charge will be amended back to April 2010, the ratepayer will be refunded and the overall impact on the rates income received from that ratepayer as a result of this measure will be nil.

6. Under the rates retention scheme individual local authorities will retain different percentages of business rates income depending upon the type of authority, whether they are on the safety net or paying a levy and whether they are part of a 100% growth pilot. These percentages could change year to year depending upon their circumstances, such as where an authority comes off the safety net or joins a 100% growth pilot. Where this has happened, the impact on the local authority's retained business rates from the increased charge following the Mazars decision in one year may be different to the impact upon retained rates income from the refund in a different year.

7. As a result of this timing difference, some local authorities may, in theory, see an overall financial consequence from this measure. We are unable to estimate this impact in practice but it is likely to be small overall and may be to the benefit as well as the detriment of authorities.

Q4. Has there been an impact assessment? If so, please provide us with a copy.

8. As this draft Bill implements a Budget measure and amends a location taxation regime, no impact assessment has been prepared. This is normal for tax legislation and reflects the practice followed for example on the Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill and the Finance Bill.

9. As we explain in the consultation document, we estimate that the number of ratepayers whose eligibility for small business rate relief was affected as a result of the Mazars decision to be less than 1,000. Those ratepayers will, subject to other changes to their rateable value or circumstances, see their eligibility for small business rate relief restored following Royal Assent of the Bill. This is an estimate at the England level. We do not hold centrally data about which properties receive Small Business Rate Relief and, therefore, no further analysis of this estimate is possible.

10. Ratepayers may also have seen their total rateable value change as a result of the Mazars decision due to the loss of a "quantum discount" and due to rounding (see paragraphs 16, 17 and 21 of the consultation document). These impacts will, subject to other changes to the property, be reversed following Royal Assent of the Bill.

11. The VOA undertook an exercise to implement the change in practice following the Supreme Court decision and is able to track the resulting change in rateable value from that exercise. On 13 September 2017 Melissa Tatton CBE, the Chief Executive of the VOA wrote to the Treasury Select Committee with the latest data from that work. However, in practice this exercise will have also captured changes in rateable value for other reasons such as where there have been physical changes to the property. And Valuations Officers may also have changed rateable values for the Mazars decision in the normal course of business. Therefore, we have explained in the consultation document that it is not possible to say with certainty how much rateable values have changed due to the Mazars decision and how much from other factors.

Q5. Why does the department take the view-as set out at paragraph 29 of the consultation document-that a void between two otherwise contiguous properties will not prevent them from being treated as contiguous under the draft Bill?

12. The practice prior to the Supreme Court decision was that properties separated by a wall or a floor/ceiling in which there was a void in the occupation of another party (such as a void for services) were still considered to be contiguous. This is despite the fact that, in strict terms, the void would otherwise mean the properties were not contiguous. This divergence between the strict meaning of contiguous and the rating meaning (which was highlighted by the Supreme Court) has meant that in drafting the legislation we have had to define the meaning of contiguous in order to restore the previous rating practice.

13. In doing so we have, in respect of 3ZB(a), relied upon the common meaning of the term wall on the understanding that a structure between units of properties can include voids for matters such as services and still be considered a single wall. This contrasts with two walls separated by, for example, a room. And in respect of 3ZB(b) we have relied upon the floor of one hereditament being considered to form all or part of the ceiling of the other hereditament even if a void for services existed within them.

14. These are probably the most difficult parts of the draft Bill and precisely why we felt it so important to consult. A lot of the discussion with stakeholders has centred around these provisions and we will, of course, look again at them in light of responses to see if they meet the policy objective.