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Business Rates Review

Call for Evidence

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The CIOT responds to the first tranche of the review of non-domestic rates (business rates) in England commenting on the reliefs section. The response to the further sections will follow.
- 1.2 As the call for evidence notes, there are a number of mandatory rate reliefs. The most significant mandatory reliefs in revenue terms are Charitable Rate Relief¹ and Small Business Rate Relief^{2,3}. In March 2020, in response to Covid-19, the government introduced a full business rates relief for retail, hospitality and leisure properties for 2020/21. In addition, local authorities have certain discretionary relief powers. Business rates are administered by the 314 billing authorities. It is the responsibility of the billing authorities to determine eligibility of ratepayers for mandatory reliefs provided by central government and for local discretionary reliefs. GOV.UK provides a list of business rates reliefs.⁴ Some buildings and land are exempt from business rates including agricultural land and buildings.
- 1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.4 Our stated objectives for the tax system include:

A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.

¹Cost £1.93bn 2018/19 Call for evidence para 3.2

²Cost £1.26bn 2018/19 Call for evidence para 3.2

³The government stated its long-term policy commitment to replace small business rate relief with an allowance system once local authority and HMRC systems are linked in line with planned digitalisation of business rates (see PQ 176219 2017-19, 16 Oct 2018)

⁴<https://www.gov.uk/apply-for-business-rate-relief>

Greater simplicity and clarity, so people can understand how much tax they should be paying and why.

Greater certainty, so businesses and individuals can plan ahead with confidence.

A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).

Responsive and competent tax administration, with a minimum of bureaucracy.

2 Executive summary

- 2.1 Historically business rates have been perceived as a property cost rather than as a tax. That perception is changing and it is therefore timely and appropriate to evaluate business rates more generally and reliefs specifically by reference to the principles of good tax design.
- 2.2 More systematic transparent post-implementation reviews of business rates relief should be undertaken to ensure reliefs meet their objectives and to promote predictability and stability. Where a detailed review is likely to be hindered by a lack of availability of accurate data, consideration should be given as to how reliable data can be captured in the most effective manner.
- 2.3 Greater consistency and transparency around the criteria for business rates reliefs and the processes for claiming them would help to ensure reliefs are targeted more effectively. Consistency of application of the criteria for reliefs would also appear to be a prerequisite for the government's long term commitment to any centralised form of digitalisation
- 2.4 We question whether awareness of reliefs is sufficiently high among small businesses. Small businesses tend to simply accept the rateable value assessment. Methods of improving awareness and accessibility of reliefs should be investigated.
- 2.5 Does HMRC's Charter cover business rates and the Valuation Office role in relation to the Check, Challenge, Appeal (CCA) process?
- 2.6 Business rates are not included in the tax gap; there is very little published data on existing business rates mitigation schemes and tax leakage. Any evaluation of the extent of the problem by reference to the objectives of the various reliefs and the appropriate methods for addressing abuse will require data on the tax leakage.

3 Q1 How well do current reliefs and exemptions deliver their intended outcomes and satisfy the principles of good tax design? What changes would you suggest to the system?

- 3.1 Historically business rates have been perceived as a property cost rather than as a tax. That perception is changing and it is therefore timely and appropriate to evaluate business rates more generally and reliefs specifically by reference to the principles of good tax design. The call for evidence at paragraph 3.4 outlines those principles as:
 - how effectively reliefs meet their objectives,

- whether they represent value for public money,
- whether they generate unintended consequences such as distorting decisions on use of property, and risks from avoidance or abuse.
- predictability, stability and supporting simplification of the tax system

3.2 There are two broad categories of tax reliefs: structural tax reliefs and non-structural tax reliefs. Structural tax reliefs are largely integral parts of the design and scope. Non-structural reliefs are where government opts not to collect tax to pursue social or economic objectives.

The distinction between the two may not be clear-cut, in particular for business rates. For example, business rates are assessed by reference to hypothetical rents at a set date for a location. A vacant property does not by definition produce any business income, therefore for an owner-occupier of a vacant property who would generally meet their business rates liability out of general business income, the basis of assessment is even more hypothetical than for commercial tenants and can lead, we understand, to impacted properties having a negative value and owners being put into substantial financial stress. Whilst this is relieved to some extent by the empty property reliefs, these are often not sufficient to cover the actual period of non-occupation. On the other hand, from an economic and social perspective the government wants to encourage property owners not to leave their properties vacant so the reliefs are restricted.

- 3.3 In principle the requirement for non-structural reliefs is reduced or negated where the tax rate reduces or the tax base widens and the case for simplification is accordingly strengthened.
- 3.4 Some reliefs are permanent parts of the business rates system and some 'temporary' (pre-dating the temporary COVID reliefs)-introduced to address short-term issues although in the latter case often extended or repeated in a slightly altered form. Constant tinkering with reliefs scores poorly against stability and simplification. Systematic evaluation would promote stability and predictability.
- 3.5 However, it is not clear to us whether there is an established process for regular independent evaluation of business rates relief to establish whether they meet their intended outcomes and the principles outlined. We note, for example that the National Audit Office (NAO) report on the management of tax expenditures⁵ in February 2020 did not include business rate reliefs. We recognise that reviews have been commissioned in the past however systematic regular evaluation seems to be lacking.
- 3.6 The NAO's conclusion that more needs to be done to monitor the use and impact of tax reliefs generally seems to us to apply equally to business rates reliefs. There is no formal framework governing the administration or oversight of tax expenditures more widely. The closest framework which requires such monitoring is the Tax Consultation Framework to which the government has re-committed. However, the final stage of the framework, reviewing and evaluating the change, seems to be rarely undertaken.
- 3.7 More systematic transparent post-implementation reviews of business rates relief should be undertaken; either by HM Treasury, The Ministry of Housing, Communities and Local Government or independently of government, and then form the basis of scrutiny in Parliament. Where a detailed review is likely to be hindered by a lack of availability of accurate data, consideration should be given (either in relation to existing reliefs, or in the development of new reliefs) as to how reliable data can be captured in the most effective manner.

⁵ <https://www.nao.org.uk/report/the-management-of-tax-expenditures/>

3.8 These themes were further elaborated on in the 2017 Better Budgets report⁶ in relation to non-structural tax reliefs. This report called on the government to institutionalise the evaluation of such tax measures – that is provide for systematic post-legislative review of whether reliefs are achieving their objectives at an acceptable cost. We consider the same applies to non-structural business rates reliefs and would reflect the principles of good design set out in the call for evidence.

4 How can reliefs be targeted more effectively? How can reliefs and their administration be simplified?

4.1 Billing authorities are responsible for the administration of reliefs as part of their role in billing and collection. There is no obligation for them to be consistent in how reliefs are notified or applied. The Treasury Committee inquiry: *impact of business rates on business* report points out that all billing authorities have the autonomy to run their business rates system as they see fit.⁷ Greater consistency and transparency around the criteria for business rates reliefs and the processes for claiming them would help to ensure reliefs are targeted more effectively. Currently businesses find it difficult to know what reliefs they are eligible for, and local authority guidance on reliefs can be limited and vary between billing authorities. There is a perception that the business rates relief administration sometimes lacks professionalism with vague statements such ‘we may award the relief’ instead of setting out the objective criteria. This lack of transparency and consistency increases administrative burdens and adds complexity for business particularly for those operating across local authorities. Consistency of application of the criteria for reliefs would also appear to be a prerequisite for the government’s long term commitment to any centralised form of digitalisation⁸.

4.2 Some local authorities are either not aware of all the mandatory reliefs available or do not have a mechanism for payers to claim them. The method by which a relief is claimed varies also between authorities. Some authorities offer an online facility while others use paper forms; the forms themselves differ between authorities. Administration would be much simpler if the method of claim was consistent.

4.3 The Treasury Committee recommended that⁹: *The Ministry for Housing, Communities and Local Government (MHCLG) should work with all billing authorities to create a single comprehensive guide on how business rate reliefs are operated by the individual billing authorities. This would result in consistency in approach by all billing authorities. It would also provide clarity for business on what discretionary reliefs they may be eligible for, and what steps must be taken to claim them.*

We strongly endorse this recommendation.

4.4 We question whether awareness of reliefs is sufficiently high among small businesses. Leaflets put in with the rates bills may not be comprehensive or targeted and perhaps not always read. Small business tends to simply accept the rateable value assessment. Consistency of application and better guidance through a single comprehensive guide would certainly help with awareness. Other methods of improving awareness should be investigated.

⁶ Published by the Chartered Institute of Taxation (CIOT), Institute for Fiscal Studies (IFS) and Institute for Government (IfG), the *Better Budgets* report outlines ten steps toward making better tax policy.

<https://www.instituteforgovernment.org.uk/publications/better-budgets-making-tax-policy-better>

⁷ Paragraph 59 https://publications.parliament.uk/pa/cm201919/cmselect/cmtreasy/222/22206.htm#_idTextAnchor015

⁸ See PQ 176219 2017-19, 16 Oct 2018) <https://www.parliament.uk/written-questions-answers-statements/written-question/commons/2018-10-08/176219>

⁹ Paragraph 60 https://publications.parliament.uk/pa/cm201919/cmselect/cmtreasy/222/22206.htm#_idTextAnchor015

4.5 As we pointed out in our recent response to HMRC's Charter consultation¹⁰ it would be helpful to make clear whether business rates are covered by the HMRC Charter. Although business rates are collected by local authorities, challenges to rateable value are made via the Check, Challenge, Appeal (CCA) process with the Valuation Office Agency which is an executive agency of HMRC. Does this process fall within the scope of the Charter?

5 What evidence is there on the capitalisation of business rates and business rates reliefs into rents over time? What does any evidence mean for the design of rates reliefs and business rates more broadly?

5.1 We are not economists nor have we assessed the body of evidence. We note the doctoral thesis 'Policy Evaluation with Advanced Analytics: Non-domestic Property Tax Reliefs' (2018) and the article by the author in the British Tax Review¹¹ pointing to arguments that (in the context of Small Business Rate Relief) in the short term the benefit of the relief may be received by the occupier because of the lag in rent review, however owners would subsequently benefit through increased rents and capital values potentially to the disadvantage of the occupier if consequential rent increases exceed the benefit of the relief. We offer no comments on this analysis, however we reiterate the need for reliefs to be regularly evaluated and assessed against their intended objectives.

6 What role should local authorities have in determining business rates reliefs and exemptions? Should reliefs and exemptions be set by central government or set locally?

6.1 Reflecting our comments above at section 4 in relation to effective targeting of reliefs and simplification, our starting point is that reliefs and exemptions set by central government should be applied consistently by all local authorities. As noted at 3.1 of the call for evidence, where reliefs are introduced by central government the entire cost of the relief falls to the Exchequer. There is therefore no disincentive for local authorities to promote these reliefs and encourage claims.

6.2 Equally there is a good case for local authorities to offer additional reliefs and exemptions in line with local needs, plans and investment strategies. We note where local authorities introduce reliefs, the costs are shared between central and local government.

6.3 The system for offering additional local reliefs and exemptions should be uniform across the local authorities to improve transparency and enable businesses to get certainty on the claims process.

7 Are you aware of ratepayers misusing tax reliefs or other means to avoid paying their full business rates liability? What could be done to tackle this?

7.1 The starting point for evaluating the misuse of a tax relief is a clear statement of the objective of the relief intended by Parliament. The call for evidence refers to misuse of (particularly) empty property relief through artificial arrangements, often operating within the letter of the law, but which enable ratepayers 'to gain an

¹⁰ <https://www.tax.org.uk/sites/default/files/200728%20HMRC%20charter%20consultation%20-%20CIOT%20response%20FINAL.pdf>

¹¹ Unintended recipients of rising UK non-domestic property tax reliefs B.T.R 2020 2 143-150

unfair tax advantage that parliament never intended'. There is however very little published data on existing mitigation schemes and tax leakage. Business rates are not included in the tax gap. The tax gap publication¹² states:

'The tax gap estimates only cover the taxes administered by HMRC, so exclude taxes and duties administered elsewhere (Council Tax, business rates, and Vehicle Excise Duty) as well as charges, such as the congestion charge. These estimates also exclude error and fraud in tax credits which are published separately.'

Any evaluation of the extent of the problem by reference to the objectives of the relief and the appropriate methods for addressing issues will require data on the tax leakage.

- 7.2 As we note above, to some extent empty property relief has elements of both structural and social or economic objectives. Evaluation of 'misuse' should be considered from both perspectives. If reliefs fail to address a structural deficiency, economic behaviour is likely to be driven by that distortion. For example, during a recession a property owner may struggle to rent out a property, their difficulties exacerbated by business rates acting as a financial disincentive to carry out work to re-develop or re-let the property. The number of recent cases in the High Court¹³ relating to schemes to minimise business rates liability on empty property may provide an indication that business rates on empty properties are distorting decisions on use of property. To the extent that is the case, it should be tackled by considering the scope of the relief or more radically, the basis of the charge (currently based on multipliers applied to historic rents/ revaluations).

It should also be noted that the complexity of the current system and the inconsistency of its application may also lead to business rates payers claiming reliefs they consider to be applicable, yet are not intended for that use.

- 7.3 In terms of misuse of tax reliefs, the law draws a clear distinction between tax evasion, which is a criminal offence involving dishonesty, and tax avoidance. It is a criminal offence to undertake tax evasion, or to be knowingly concerned in tax evasion by another. In addition, section 45 of the Criminal Finances Act 2017 introduced a new strict liability corporate criminal offence in circumstances where a relevant body fails to take reasonable steps to prevent the criminal facilitation by their employees or other persons acting for them or providing services to them of tax evasion by a third party. It is not clear to us whether the Criminal Finances Act 2017 applies to business rates noting that under section 45(7) 'tax' means a tax imposed under the law of any part of the UK including national insurance contributions.
- 7.4 Finance Act 2013 introduced the General Anti-Abuse Rule (GAAR) which was designed to counteract tax avoidance. Transactions counteracted under the GAAR may result in higher levels of civil penalties. Broadly an arrangement may be caught by the GAAR if it goes beyond anything which could 'reasonably be regarded as a reasonable course of action' in relation to relevant tax provisions as defined in section 206(3). The list of taxes does not include business rates (nor council tax). Consideration might be given to extending the GAAR to business rates to address abuse including the wider question of whether business rates should be brought more comprehensively within a broader tax framework. We propose to consider the wider question in our second phase response.

¹²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907122/Measuring_tax_gaps_2020_edition.pdf at p.15

¹³ See for example *Makro Properties Ltd v Nuneaton and Bedworth Borough Council* [2012] EWHC 2250, *Sunderland City Council v Stirling Investment Properties LLP* [2013] EWHC 1413 (Admin) R. (on the application of *Principled Offsite Logistics Ltd*) (*POLL*) v *Trafford Council* [2018] EWHC 1687 (Admin)

8 Acknowledgement of submission

- 8.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

9 The Chartered Institute of Taxation

- 9.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

9 September 2020