

Reforming Non-Domestic Rates in Wales

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We are very concerned that the Welsh government's proposals to remove the need for primary legislation to create, amend or remove permanent business rates relief schemes and the scope of exemptions, and instead to use regulations to effect changes, will lack appropriate scrutiny. Our starting point is that tax laws should be set out in primary legislation particularly in so far as they relate to the exercise of tax powers setting out what is subject to tax and imposing burdens on taxpayers. Reliefs provided to one sector of ratepayers may indirectly place burdens on other sectors through increased business rates bills. Secondary legislation should generally be used only for administrative matters.
- 1.3 We agree that moving, initially at least, to revaluations every three years provides a balance between administrative cost and the need for regular revaluation to reflect economic conditions. However, given the rapidity of changes in business and shopping practices a phased approach to achieving even more frequent valuations should, we suggest, remain under evaluation. In the longer term, if a local land value tax were to be proposed as a replacement for business rates and council tax in Wales annual valuations would be required.
- 1.4 The new information requirements represent a significant step-change away from the informal basis of business rates where there has never been any duty on the ratepayer to notify the billing authority of changes that affect liability. The new obligations will therefore impose requirements on those businesses who have had little or no engagement with the business rates systems to date, in particular, for small businesses eligible for 100% small business rate relief. An extensive communications campaign in Wales will be essential.
- 1.5 The development and testing of the online service will be key to implementation as teething problems with new online systems and software inevitably create administrative and cost burdens for taxpayers. The system needs to facilitate agent access so that it works for businesses that engage an agent to act on their behalf.

- 1.6 The proposed general anti-avoidance rule for business rates in Wales and the basis on which it will be applied should be set out in primary legislation, as proposed. However, contrary to the consultation proposal, we are also of the view that the accompanying civil penalty regime should be in primary legislation, not imposed by regulation. This is to ensure proper scrutiny of legislation so there are adequate safeguards and that financial penalties are proportionate.
- 1.7 Clarity of scope and the purpose of reliefs from introduction is important in relation to the application of any general anti-avoidance rule. The number of cases 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 as part of the proposed review of reliefs, or more radically, the basis of the charge (currently based on multipliers applied to historic rents/revaluations).

2 About us

- 2.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 In March 2022 the Minister for Finance and Local Government set out the Welsh government's plans for the reform of business rates during the current Senedd term¹, building on the conclusion of research projects published in the paper: Reforming Local Government Finance for Wales: Summary of Findings². The overarching immediate aim is to retain the benefits of business rates while delivering improvements to the overall business rates system in Wales and meet emerging Wales specific challenges.
- 3.2 This consultation considers the following main proposals for reform :
- A change from the current five-yearly valuation to a three-yearly valuation cycle so that the next revaluation after 1 April 2023 would take place on 1 April 2026.

¹ <https://record.assembly.wales/Plenary/12661#A71283>

² <https://gov.wales/reforming-local-government-finance-wales-summary-findings>

- To support the change to more frequent valuations and to ensure timely flows of information required for valuation (changes to occupier and property characteristics also commercial, rent and lease information) the introduction of a legal duty (during the 2023 rating list) requiring ratepayers to supply information to the Valuation Office Agency (VOA) via a new online service. Information will need to be provided close to the event, proposed to be within 60 days and via an annual confirmation (due within 60 days after 30 April).³
- A review of business rates reliefs and exemptions
- Measures to improve administration including the introduction of a business rates general anti-avoidance rule.
- Alternative approaches to raising local taxes in the longer term such as a local land value tax.

3.3 The UK government has also recently consulted on similar detailed proposals for more frequent valuations and the provision of valuation information via an online service as part of its wider business rates review.

3.4 Our stated objectives for the tax system include:

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

3.5 The Welsh government's core tax principles are:

Welsh taxes should:

- raise revenue to fund public services as fairly as possible.
- deliver Welsh Government policy objectives.
- be clear, stable and simple.
- be developed through collaboration and involvement.
- contribute directly to the Well-Being of Future Generations Act 2015 goal of creating a more equal Wales.

³ The Welsh government recently launched a consultation on changes to implement a 'check, challenge, appeal' system for Wales, from 1 April 2023. Once the proposed duty and annual confirmation process is embedded, it is proposed this will replace the need for a 'check' to be completed before a ratepayer is able to 'challenge' the rateable value of their hereditament. Instead, a ratepayer will only be able to make a 'challenge' after they have completed their annual confirmation.

3.6 Questions 19, 20 and 21 are not answered.

4 Enabling more frequent valuations

Question 1: Do you agree revaluations should occur at least every three years in future, to maintain fairness in the system by ensuring valuations are updated more often to reflect changing economic conditions? What are your reasons for your answer?

4.1 We agree that moving, initially at least, to revaluations every three years provides a balance between administrative cost and the need for regular revaluation to reflect economic conditions. However, given the rapidity of changes in business and shopping practices a phased approach to achieving even more frequent valuations should, we suggest, remain under evaluation. In the longer term a local land value tax as a replacement for business rates and council tax in Wales would require annual valuations.

5 **Question 2 Do you think revaluations should occur more frequently than every three years? If so, how often would you suggest?**

As above, we think the possibility of moving to a more frequent cycle should be evaluated.

Question 3 Do you think the gap between the antecedent valuation date and the revaluation taking effect should be less than two years, if possible, in future?

5.1 A two year gap between the antecedent valuation date (AVD) and the revaluation looks excessive once three yearly revaluations have been adopted. A target of a one year AVD lag would bring it closer whilst still allowing the VOA time to collect rental evidence. In that way a revaluation would be more responsive to changing market and economic conditions.

6 **Question 4 Do you have any views on the proposals to create a duty on ratepayers to inform the VOA if certain information relating to the hereditament changes, and the new duty to provide annual confirmation, to support more frequent revaluations and the maintenance of accurate rating lists?**

6.1 The new information requirements represent a significant step-change away from the informal basis of business rates that has existed for centuries where there has never been any duty on the ratepayer to notify the billing authority of changes that affect liability. It should be borne in mind that rights over commercial property and its physical state changes frequently, often in complex ways, and much of the background information is not digitised.

6.2 The information obligations will apply to ratepayers who pay no business rates as a result of a relief. The new obligations will therefore impose requirements on those businesses who have had little or no engagement with the business rates systems to date, in particular, for small businesses eligible for 100% small business rate relief. These businesses would therefore not have any representation and doing so would impose additional costs at a time of economic uncertainty.

6.3 In considering the design, is there any scope for pre-populating the online system where information has already been reported, for example trading and accounts information provided via corporation tax returns or lease details in land transaction tax returns or lease information held at the Land Registry? It would be essential

though to allow the ability to overwrite any prepopulated information so the ratepayer or their agent can amend incorrect entries and to explain/validate their reasons for doing so in white space.

6.4 The design principles for the new online information provision service are outlined in the consultation:

- It is straightforward and easy to use for all ratepayers, creating minimal additional burden;
- It should not be punitive on those who may legitimately struggle with compliance, but encourages all ratepayers to comply;
- It allows lenience for genuine errors, but focuses enforcement on those wilfully refusing to comply or knowingly providing false information; and
- It is practicable and cost-effective for ratepayers and the VOA.

We agree with these principles and also the need to provide an alternative method (that is, a paper alternative for ratepayers who are digitally excluded) to the online service for ratepayers who are unable to access the service online.⁴

We would add that setting out the requirements for reporting, and the sanctions for failure to comply, together with the safeguards (for example reasonable excuse), in primary legislation (supplemented with easily accessible and understandable guidance as proposed) should underpin the design.

6.5 Ratepayers will need to sign up to a new VOA online service. Our members experience in using similar online services in the tax system suggest the following features built into the design would improve/enhance the process:

- The ability to save a partially completed entry so that it is possible to return to the service when further information has been found/checked without having to start again.
- An easy process for amending an entry that is subsequently found to be incorrect/inaccurate thereby reducing the scope for error and improving the ratepayer experience.
- Clear guidance on the information needed before starting a process so all the information can be assembled in advance.
- The ability for the system to be accessed by more than one individual within a business or an agent's firm ie to allow for access to be delegated so multiple people can view and edit.
- Unlimited text entry (that is, no fields with limits on the numbers of characters permitted to be used in them) and the ability to upload common file types (such as pdfs) easily to provide the information requested.
- The ability to upload bulk data or information held in Excel or in other formats to minimise costs and administrative burdens.
- Ensuring the system is accessible for non-UK ratepayers and their agents as well as for resident ratepayers. We are aware that offshore ratepayers have found it difficult to register for CCA when they want their agent to submit an appeal to derate empty property undergoing refurbishment.

⁴ See *LH Bishop Electrical Co Ltd and Others v HMRC Commissioners* [2013] UKFTT 522 (TC)

Three of the appellants ran their own small businesses. Two of the appellants experienced disabilities which made it excessively difficult or impossible for them to use a computer, and a third lived in a remote area of the country where broadband access was absent or unreliable. All three were of an age which made learning how to use a computer particularly difficult and they would have had to incur the cost of instructing an agent. The judge held that the regulations which required online filing of VAT returns without providing exemptions for older people, those with disabilities or who lived in parts of the country which were too remote for broadband access, were in breach of the appellants' human rights and were unlawful under the EU Treaty.

- 6.6 The development and testing of the online service will be key to implementation as teething problems with new online systems and software inevitably create administrative and cost burdens for taxpayers. In the wider tax system, we have seen examples where the pace of new legislation can run ahead of the ability to develop the systems to implement it, and this should mean that either one needs to slow down or the other needs to speed up, requiring expensive resources for changes to legislation and development of new IT systems. This should be taken into account when recommendations are made to ministers.
- 6.7 The consultation indicates consideration will be given to optimising the online service so that it works for businesses that engage an agent to act on their behalf. Agents will have a very significant role in ensuring the new system operates as intended and early consideration should be given to facilitating agent access. It is possible that more ratepayers will wish to use an agent to meet their new filing obligations. There is no indication of the means by which agents will be authorised to act for their clients. It would reduce administrative burdens if agents with a current authorisation to act for a client are not required to seek re-authorisation from their existing clients in order to return information under the new process. Our members' experience with the 60-day property reporting service for capital gains tax - where it was necessary for agents, who were already authorised to act for clients for the purposes of self-assessment, to undertake a 'digital handshake' with these clients - was that taxpayers simply do not understand why they need to authorise agents again for each new system when they have already given authorisation.
- 6.8 We welcome the commitment to accommodate businesses with large property portfolios. For large businesses with multiple hereditaments the ability to provide bulk data via the online system will be essential to minimise burdens, similarly a facility for group registration for the online process.
- 6.9 An extensive communications campaign in Wales will be essential particularly for ratepayers who have not previously had regular engagement with the rating system because of 100% relief. They will be expected to 'take simple steps to find out what information they need to provide'. One of the challenges will be communicating the changes to other 'hard to reach' groups such as non-resident owners of unoccupied buildings. There may be an early opportunity to signpost the obligations through the various interactions that new businesses have across the Welsh government. Similarly the VOA may wish to engage with other third party representative bodies in Wales (for example, for accountancy, tax, estate agents, solicitors and conveyancers) to raise awareness of this new system at an early stage. The aim would be to help these professionals prepare for the new system and raise awareness of it with their clients, so that compliance levels are high from the start.
- 6.10 Experience with similar online tax processes indicates that engagement with representative bodies/stakeholders on the design of the new system, for example showing the pages in meetings so that comments can be provided on the ease with which users may interact with it helps to iron out any issues before it goes live. This is an approach which is being adopted by HMRC for the prospective system for MTD penalties for VAT for example (and appeals thereon) that HMRC indicated is proving useful.
- 6.11 For unoccupied properties the consultation notes the VOA may need information about intended use and how it is expected to be occupied. Unless the use of the building is relatively restricted and therefore its future use is apparent, for example in the case of a storage unit, the intended use could span a number of uses. What will be the consequences if the intended and actual use differ, in terms of penalties or sanctions?
- 6.12 For physical alterations to the property, guidance will be needed on when those changes are 'completed' such that the obligation to report arises. Physical alterations will not necessarily involve a formal completion notice.

- 6.13 The consultation suggests the provision of trade, accounts and costs information will apply only to a smaller number occupying specialised types of trade-related properties such as utility networks, pubs and petrol filling stations. However the increase in turnover rents in the retail and hospitality sectors indicates a larger proportion of businesses may need to provide accounting information.
- 6.14 Will ratepayers still be required to notify the billing authority of changes in occupation? Will there be a dual system of notification to both the VOA and the billing authority? Ratepayers will need to understand from the outset which entity should be contacted if, for example, the occupation date or vacation date is wrong on the amended bill.
- 6.15 Information that needs to be provided via the online service may be held in various forms including on Excel spreadsheets or through other software (potentially including statutory accounts software, CT software and tagging software). Consideration should be given to how this information is transmitted or submitted to make it as easy as possible for ratepayers to comply without additional cost. It is not uncommon for a lease to cover multiple hereditaments. It will be time consuming and costly if the same information needs to be entered for each hereditament.

7 Question 5 Do you have any views on the proposals for a proportionate compliance regime to support the duty to provide information? In particular, do you consider the proposed penalties to be fair and proportionate?

- 7.1 The proposed framework strikes the right balance particularly for a wholly new system that will apply to ratepayers who have not previously engaged with the VOA as a result of eligibility for 100% rates relief. We think it will be important to keep the framework under review to ensure it meets its aim of supporting three-yearly valuations. In Appendix One we set out the CIOT's 10 principles against which an authority's use of its powers, sanctions and safeguards in relation to tax and any proposed powers, sanctions and safeguards can be compared.
- 7.2 It is essential for building and maintaining trust that the way the VOA use their powers and operate safeguards can be effectively monitored and subjected to appropriate oversight. Establishing a dedicated oversight forum might be considered.
- 7.3 We welcome the intention to delay the imposition of penalties so that obligations have a chance to bed in before the associated compliance regime begins.
- 7.4 Once commenced, we suggest considering the issue of physical reminder letters and warning letters for penalties for failure to notify alongside the electronic reminders to maximise their effectiveness.

8 Question 6 Do the proposed timescales provide ratepayers with enough time to meet their obligations? If not, under what circumstances would this not be possible?

- 8.1 We agree that a 60 calendar day deadline is reasonable as businesses, particularly medium and larger sized businesses, are likely to have a system of month-end reporting, therefore 30 calendar days after month end should align with existing practices.

9 Providing reliefs and exemptions

Question 7 Do you have any views on the proposal to undertake a review of relief schemes and any views on how their effectiveness should be considered? What factors should a review take into account?

- 9.1 The aim of the review is to ensure rates relief schemes are fit-for-purpose and deliver support in the most effective way in Wales. The review is intended to consider the range of reliefs, the level of support, how reliefs are targeted and how long they last.

We are in favour of systematic transparent post-implementation reviews of business rates relief as explained in the 2017 Better Budgets report⁵. It is important to ensure reliefs are achieving their objectives at an appropriate cost and with administrative burdens minimised, with the results of those reviews published on a timely basis to identify unintended consequences such as the use of reliefs for avoidance of rates or the reasons for low take-up by those who are intended to benefit. Clarity of scope and purpose of reliefs from introduction is important in relation to the application of a general business rates anti-avoidance rule as considered further below.

- 9.2 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 a government opts not to collect tax to pursue social or economic objectives. 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. When reviewing reliefs the categorisation is important because it should provide the context in which it is reviewed; a structural relief should be evaluated in the light of the overall business rates system and its operation, whereas a non-structural relief should be evaluated in the light of its particular objectives.
- 9.3 We recognise however that 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 relief, this is 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.
- 9.4 In terms of broad factors to take account in evaluating reliefs, we suggest the following elements are important:
- Clear as to their scope and purpose, in terms of who is intended to benefit from the relief, and meet a defined objective.
 - Costed to an adequate level of accuracy. The costs should be appropriate to the benefits intended to result from the relief.
 - Readily accessible to those who they are intended to benefit, straight-forward to claim and administer and without intended consequences such as distorting economic decisions on the

⁵ 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>

use of property or creating avoidance risks. Reliefs inevitably introduce complexity. Keeping the administration simple and streamlined can minimise the effects of that complexity.

- Predictable over time to provide certainty to business
- Be consistent with the Welsh government's wider policies and tax principles.

10 Question 8 Do you have any views on our proposals to enable the Welsh Government to amend, remove and create new statutory reliefs by secondary legislation to align to policy priorities?

- 10.1 In order to 'future-proof' the business rates system and attain greater flexibility and responsiveness in the design and implementation of business rates reliefs, the Welsh government proposes to remove the need for primary legislation to create, amend or remove permanent NDR relief schemes. Instead it is proposed these are made by regulations. It is also proposed that the scope of exemptions may be provided in regulations removing current limitations in primary legislation.
- 10.2 Our starting point is that tax laws should be set out in primary legislation particularly in so far as they relate to the exercise of tax powers setting out what is subject to tax and imposing burdens on taxpayers. Reliefs provided to one sector of ratepayers may indirectly place burdens on other sectors through increased business rates bills. Secondary legislation should generally be used only for administrative matters, and for the setting of rates. For business rates regulations have been typically and usefully used to update relief thresholds, particularly where these are referenced to the level of rateable value. That is a good example of effective administrative use of regulatory powers. We are very concerned that the wider use of regulations, particularly to create new business rates reliefs or extend exemptions, will lack appropriate scrutiny.
- 10.3 We recognise the challenges in introducing primary legislation in terms of finding parliamentary time in the Senedd timetable and the length of time taken to bring new legislation into force⁶ but the legislative process should reflect the significance of business rates in raising revenue in Wales and therefore the importance of the Senedd's scrutiny to work through the legislation and understand the full consequences of providing reliefs.
- 10.4 We have previously responded to the Welsh government's consultation: Tax Devolution in Wales – Enabling changes to the Welsh Tax Acts⁷. We noted that at that time (October 2020) the volume of legislative change required in relation to land transaction tax and landfill disposals tax was probably insufficient to justify an annual finance bill process in Wales. However, the proposed extensive (and welcome) reforms to business rates and council tax in Wales strengthens the case for an annual finance bill process in Wales to cover all devolved taxes for which the Senedd passes legislation including business rates and council tax. An annual finance bill covering business rates (and council tax) would enable the Welsh government to implement changes and manage the overall landscape of reliefs in line with policy objectives but, importantly, with full scrutiny.

⁶ 12-18 months

⁷ The Welsh Tax Acts mean the Acts implementing Land Transaction Tax and Landfill Disposal Tax and the associated administrative Act : Tax Collection and Management (Wales) Act 2016, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017.

11 Question 10 What is your view on the proposal to give local authorities greater flexibility to award retrospective discretionary relief?

- 11.1 The parameters within which local authorities can award or change discretionary reliefs is subject to a specific restriction that prohibits such action more than six months after the end of the financial year. It is proposed this limitation should be removed to give local authorities unlimited discretion to apply discretionary reliefs.

We have no comments on the specific proposal but we would caution that there is a perception that the business rates relief administration sometimes lacks professionalism with vague statements such as ‘we may award the relief’ instead of setting out objective criteria. This means 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. This lack of transparency and consistency increases administrative burdens and adds complexity for business particularly for those operating across local authorities. We suggest that greater transparency and consistency about how business rate reliefs are operated by the individual billing authorities would provide clarity for business on what discretionary reliefs they may be eligible for, and what steps must be taken to claim them.

12 Varying the multiplier

Question 11 What is your view on proposals to provide the Welsh Government with the ability to vary the multiplier for properties of different use, rateable value and geographical location, to align to policy priorities?

Question 12 Do you have any other suggestions for parameters that could be considered in varying the multiplier?

- 12.1 The rateable value valuation already reflects different rental values. Reliefs allow for direct economic policy, socio-economic policy and nudging behaviour. To add multiplier variations into this mix would make the system very complex and may result in undesired ratepayer responses or distortions. The introduction of Uniform Business Rates from 1990 was in part aimed at removing the regional distortions that arose from councils having their own poundage setting power. Industry relocated from high rated areas such as Liverpool and Sheffield.

Scotland has three multipliers according to size of property/rateable value but no other parameter. It is a small nod towards recognising that property taxes tend to place a greater burden on occupiers of smaller property.

13 Improvements to valuation and rating list administration

Question 13 Do you have any views on proposals to ensure that changes in economic factors, market conditions or changes in the general level of rents are addressed through more frequent revaluations, rather than as material changes of circumstances between revaluations?

- 13.1 We agree with the proposal that economic factors and market conditions should be reserved for revaluations.
- 13.2 **Question 14 Do you think the proposed changes to completion notice procedures will help to ensure all relevant properties are listed for NDR in a timely manner?**

The proposed change to completion notice procedures would address a lacuna in the completion notice procedure whereby refurbished property does not come back into rating until it is reoccupied. However, to levy empty rates after practical completion of the works re-enforces the criticism of the empty rate system that it deters owners/investors from upgrading the property stock. If the procedure was changed as proposed then it might be useful to have a lengthened 'free period' of up to say twelve months (rather than three for commercial and six for industrial) so that owners are not disincentivised from improving their property.

13.3 Question 15 Do you have any views on proposals to improve administration of the central rating list?

We understand that the Central List has always been very slow to react to changes in corporate structure of the entities on the Central List. Proposals to speed up changes are therefore welcomed.

14 Question 16 Do you have any views on proposals for a general anti-avoidance rule for NDR in principle?

Question 17 Do you think local authorities should have more powers to enable them to counteract NDR avoidance effectively?

- 14.1 A proposed general anti-avoidance rule (GAAR) for business rates is intended to enable the Welsh government to make regulations to address business rates avoidance including avoidance behaviours that may emerge in the future. It is intended that regulations will also provide for a civil penalty regime and confer powers on local authorities to operate anti-avoidance measures, as part of their role of administering business rates.

It is proposed that the parameters of the anti avoidance rule are set out and defined in primary legislation, a similar approach to that adopted in Scotland in the Non-Domestic Rates (Scotland) Act 2020 sections 37-41⁸ with the power to make anti- avoidance regulations within those parameters.

Has consideration been given to extending the application of the existing general anti-avoidance rule⁹ to business rates? The current Welsh GAAR applies to 'any devolved tax' as defined in the section 116A (4) of the Government of Wales Act 2006¹⁰, that is, land transaction tax and landfill disposals tax only.

- 14.2 Consistent with our comments above, we think any GAAR for business rates in Wales and the basis on which it will be applied should be set out in primary legislation, as proposed. However, contrary to the proposal, we are also of the view that the accompanying civil penalty regime should be in primary legislation, not imposed by regulation. This is to ensure proper scrutiny of legislation to ensure there are adequate safeguards and that financial penalties are proportionate.

- 14.3 The starting point for evaluating the misuse of a tax relief is a clear statement of the objective of the relief intended by the Senedd. Therefore clarity of scope and the purpose of reliefs from introduction is important in relation to the application of any general anti-avoidance rule. As we note above, 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

⁸ <https://www.legislation.gov.uk/asp/2020/4/part/4/enacted?view=plain>

⁹ Tax Collection and Management (Wales) Act 2016 Part 3A

¹⁰ Tax Collection and Management (Wales) Act 2016 section 192(2)

re-develop or re-let the property. The number of recent cases in the High Court¹¹ 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 as part of the proposed review of reliefs, or more radically, the basis of the charge (currently based on multipliers applied to historic rents/ revaluations).

- 14.4 It should also be noted that the complexity of the current system and the inconsistency of its application between local authorities may also lead to business rates payers claiming reliefs they consider to be applicable, yet are not intended for that use.
- 14.5 The Office of Tax Simplification's report 'Property income review: simplifying income tax for residential landlords'¹² notes the complexity that arises from the interaction of the business rates rules for properties being commercially let for short periods as self-catering accommodation with the UK-wide income tax furnished holiday lettings regime. The day count test for furnished holiday lettings for income tax is not the same as the test applying for business rates in Wales (or England or Scotland). The OTS reflects the strong sense of confusion expressed by respondents that different tests apply for different purposes and suggests that it would helpful for the respective guidance pages¹³ to draw this distinction and provide links to one another.

15 Local land value tax

Question 18 What are your views on taking an alternative approach, such as a local land value tax, to raising local taxes, over the longer-term?

- 15.1 We suggest it might be helpful as part of the longer term project to evaluate separately each of the differences between business rates and a local land value tax. Business rates display four key features distinguishing them from land value tax:
- Business rates do not cover residential property (instead council tax applies).
 - There are exemptions from business rates, notably for agricultural land and in the case of occupiers who are charities (whereas the arguments on which LVT are based would tend to suggest there should be few, if any, exemptions). Exemptions based on the type of occupier would be harder to incorporate into LVT, but in any event it is debateable who economically benefits from exemptions anyway – is it the 'exempt' occupier or is the landlord thereby able to impose higher rent? (Though the prevalence of charity shops on some high streets, perhaps reflecting the competitive advantage derived from the exemption, suggests that this question should be approached carefully and on the basis of evidence.)
 - Business rates are based on rateable values so any building or improvement which increases the rent-earning capacity of the property leads to a higher rateable value. This is in contrast with LVT, the base for calculation of which is the notional value of the land alone, although there is a practical issue around the valuation excluding non-land elements of value.
 - Business rates are charged on the occupier rather than the landowner.

¹¹ 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)

¹² <https://www.gov.uk/government/publications/ots-review-of-residential-property-income>

¹³ <https://businesswales.gov.wales/non-domestic-rates-self-catering-properties-wales>

This last feature is of considerable importance, but maybe not as much as it first appears. Whenever a business takes a lease of a property on which it will pay rent, the business rates cost that will also be taken on in consequence, is known within a much greater range of certainty than many other costs and benefits of taking out the lease of that property in that location. It seems reasonable to suppose that there is a strong inverse relationship between rental and business rates levels, such that a great deal of the effective economic cost falls on the landowner.

- 15.2 We note that most economists favour a land value tax model based on purchase value in principle because it would largely avoid the current business rates disincentive of carrying out improvements or extending the business property that leads to an increase in business rates liability (even with regular revaluations). However there is a significant cost in terms of the added complexity in defining land for the purposes of a land value tax and developing approved methodologies for isolating in practice the value of the unimproved land component as the basis of assessment.

The Chartered Institute of Taxation

13 December 2022

HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers¹ and safeguards and any proposed powers and safeguards can be compared

1. Consistent – powers and safeguards should be applied consistently across HMRC, taxes and taxpayers.
2. Fair – powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers², whilst being effective in identifying and dealing with non-compliance.
3. Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.
4. Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.
5. Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.
6. Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.
7. Simple - so the rules can be more easily understood by taxpayers, agents and HMRC officers.
8. Transparent and communicated effectively – so taxpayers, agents and HMRC officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC decisions.
9. Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.
10. Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge HMRC decisions via statutory review, tribunal appeal etc.

¹ HMRC's powers are wide-ranging and cover the ability to undertake compliance checks, obtain information and documents, make decisions, raise assessments, resolve tax disputes and apply interest and penalties. As well as civil powers, HMRC have powers to prosecute taxpayers where criminal behaviour is suspected but criminal law powers are outside the scope of this document.

² Fairness includes being inclusive. Taxpayers' rights include their rights to challenge HMRC decisions (e.g. via statutory review, tribunal appeal etc).