



Experts in Business

Barclay Implementation

FSB response to proposed legislative non-domestic rates reform

Federation of Small Businesses Scotland
September 2018

Overview

The Federation of Small Businesses (FSB) is Scotland's leading business organisation. Our mission is to help smaller businesses achieve their ambitions. These micro and small businesses comprise the majority of all enterprises in Scotland (98%), employ around one million people and contribute £68bn to the economy.

FSB welcomes the opportunity to this Scottish Government consultation on legislative reforms to the non-domestic rates system. While a clear majority of FSB's premises-based members get full or partial relief through the Scottish Government's landmark Small Business Bonus scheme, many independent businesses continue to find the rates system old-fashioned, bureaucratic and opaque.

FSB broadly welcomed the recommendations of the Barclay review of business rates, which – in our view – focussed on developing a more modern and transparent rates system. Further, we broadly support most of the proposed legislative reforms. We have been pleased to sit on the Barclay Review Implementation group and have pressed for those involved in the rates system to focus on improving the administration of the tax-system from the point of view of the taxpayer, rather than the more than 30 Scottish public bodies involved in the tax.

The modernisation of the Scottish non-domestic rates system will require more than the legislative proposals outlined by Ministers. As part of the Implementation Group, FSB has been pleased to see some co-ordination between local authorities, assessors and the Scottish Government to take forward many of the Barclay recommendations.

However FSB has concerns that the delivery of a more modern NDR system is a low priority for many of the organisations involved in it. For example, the goal of delivering a standard NDR bill for all ratepayers in Scotland looks unlikely to be delivered under the timescales envisaged in Barclay. Further, there have been no guarantees that all of Scotland's local authorities will adopt the suggested bill template.

In other public policy areas – such as public procurement – the Scottish Government has recognised that different approaches adopted by different public bodies result in unhelpful and unnecessary variation and complexity.

Therefore, in addition to the measures outlined in this bill, we would ask the Scottish Government to propose additional legislation to enable them to deliver a high quality rates system for ratepayers across Scotland. We would ask Ministers to consider whether new powers and resources are required to ensure that all Scottish local authorities and assessors adopt the approach conceived by Barclay. Further – as Barclay recognised in relation to the tax affairs of ALEOs (arms-length external

organisations) – there’s a need to ensure that inconsistencies in tax application are addressed.

For a number of years, FSB has argued for a single digital interface for the Scottish non-domestic rates system, where individual ratepayers could pay bills, apply for reliefs, lodge appeals, submit rental data and understand Scottish Government policy. Ultimately, we could see this system integrating with the planning or licensing system as well as with the support provided by the country’s enterprise agencies.

Elsewhere in the UK, more modern property tax systems have been adopted. Indeed, the Barclay Implementation Group took evidence from the Northern Ireland Executive’s Land & Property Services who are currently using an impressive map-based system to administer their rates system. Not only does this system appear substantially more user friendly, but it looks likely it yields efficiencies for both the taxpayer and the state.

FSB in Scotland would therefore argue that at least two years ahead of the 2022 revaluation, the administration of the Scottish rates system should switch to a similar model. Given that this change may require primary legislation - and there be insufficient parliamentary time for an additional bill – we would ask that Ministers adjust this bill appropriately.

Question 1 - Growth accelerator and new unoccupied build

FSB would support transferring the Business Growth Accelerator from the relief system into primary legislation. Indeed we would suggest to Ministers that the Small Business Bonus should be similarly enshrined to underline to ratepayers that proportionality is a key feature of the Scottish tax system.

However, in relation to the new unoccupied build legislation, we would suggest that to ensure that as much property as possible is registered on the roll – as per the spirit of the Barclay review – that instead of keeping the property off the property roll, businesses are included on the roll but simply aren’t billed.

Given that third parties – including Scotland’s non-domestic water industry – uses the rateable valuation roll, increasing the volume of off roll property could cause problems. In FSB’s experience, businesses which occupy previously unoccupied premises that have been off role, can face difficulties claiming the Fresh Start rate relief.

Question 2 - Three yearly revaluations

More frequent revaluations should result in rateable values better reflecting market conditions. This should ensure Scottish businesses’ bills better reflect their ability to pay.

Alongside this shift to increase the frequency, FSB would argue that public bodies responsible for the non-domestic rates system need to substantially improve how they communicate revaluations. Ahead of a revaluation FSB would like to see sustained co-ordinated communications efforts from assessors, local authorities and central government regarding the need to submit rental data and related information.

Further, FSB would make the case that Scotland’s assessors should adopt more modern techniques to collect the data used to derive rateable values. We would

suggest better data sharing between tax authorities, alongside the use of online market research technology, would deliver an enhanced data-set.

By improving communications standards and using smarter techniques to collect property market data, it should be possible to reduce the administrative burden of revaluations while delivering more accurate valuations – thus reducing the volume of appeals.

Question 3 – Rates pilots

Many small businesses would welcome measures to rebalance the rates burden between town centre and out-of-town operators. However, FSB's preference would be for councils to utilise their current rates relief powers to lower town centre operators' bills – through reliefs focussed on local high streets, topping up the vital Small Business Bonus scheme.

In our view, the rates system does put pressure on areas with higher value properties which have historically been in the centre of our communities. A common complaint regarding the rates system is that it takes no account of individual firms' profitability, only their property value and location.

However these proposed pilots could also suffer from a similar fault – with a risk that low profit edge of town businesses are caught by poorly designed schemes. Alternatively, you could see small non-retail digital businesses caught by a levy designed to target large e-commerce firms and multi-channel supermarkets.

An approach which sees out-of-town businesses pay more to reduce town centre businesses' bills could create local divisions, especially if independent businesses were caught by the levy. Further, this sort of scheme will further complicated a system which is already poorly understood by many in business.

If the Scottish Government does choose to take such pilots forward, we would suggest that Ministerial approval should be required for each scheme and schemes should not be accepted which do not have the support of local businesses. We also agree that a local Council must consult on a proposed scheme local ratepayers and to publish analysis of this consultation prior to any approach being made to the Scottish Government to take part in a pilot scheme.

If a Business Improvement District (BID) operates in a pilot area, we would suggest that they could facilitate any consultation. Any pilot should not duplicate the work of a local BID.

Further, we would strongly argue that pilots should not be approved where the money raised from any levy is used to pay for services traditionally provided by local authorities (e.g. street cleaning, public realm maintenance etc.).

Given that our town centres and high streets also face a range of challenges beyond the rates burden, we would also argue that pilot schemes should also propose other measures to support the regeneration of town centres (e.g. the refurbishment of council premises, relocation of public sector services).

Question 4 – Rates pilots assessment

FSB would argue that any pilots should be assessed by the Scottish Government on their overall economic and social impact to the area affected – using qualitative feedback from local ratepayers, alongside quantitative data-sets such as local occupancy rates. Importantly, any assessment should consider the medium to long-term impact of any pilot.

Further, ministers should carefully assess any unintended consequences from any pilot schemes and seek out feedback from a wide variety of local firms – especially those that operate without shop fronts (e.g. small manufacturers) who may be less visible to policymakers.

Questions 5,6,7,8 – Data collection and proposed penalties

While many businesses recognise that rates are linked to notional property rental value, few understand the complexities of how their rateable value is calculated. Many also believe their local authority to be responsible for both setting the rateable value and rate of taxation.

We have pressed the case with the Scottish Assessors' Association (SAA) about the need for a better approach to consultation with business in order to receive more accurate information and data of a higher quality.

FSB accepts that achieving accurate valuations relies – at least partially - on businesses returning data to their local assessor. However a recent survey of our members suggested less than a third (29%) had ever returned rental data to the Assessor.¹

While the threat of a penalty could encourage a share of business owners to submit rental data, FSB believes that this move alone will not result in the routine return of rental data required for more frequent revaluations.

Therefore, ahead of the introduction of civil penalties, we would ask for a number of administrative and communicative reforms to improve collection rates.

Initially, we would suggest that a joint communications programme is launched by local authorities, assessors and the Scottish Government to encourage business to submit data. Further, we would argue that a simple digital interface for the submission of data should be introduced as a priority. Lastly, as the Barclay review argued, assessors should gather information pertinent to the assessment of values from a wider range of sources – including other public bodies and market sources.

Any penalty that is introduced should be stepped or tapered so that smaller firms – who are more likely not to have access from advice from property professionals – pay proportionally less than their larger counterparts.

FSB has a preference for a single national interface for the collection and administration of business rates – including any potential penalties.

Question 9,10,11,12 – Data sharing and proposed penalties

As outlined above, FSB believes that through the deployment of effective communications strategies and the modernisation of the rates system, it should be possible to improve Scotland's business community's understanding of the property tax. As a consequence, more businesses should understand the importance of updating the authorities of a change in their circumstances.

Further, we would highlight that many businesses believe that when they submit a planning application, or in touch with a regulator or HMRC, that this information regarding their change in circumstances would reach the non-domestic rates authorities. Better data sharing between authorities – and a single national digital rates interface – would deliver more accurate billing.

¹ FSB submission to Barclay review of Business Rates – October 2016

Any penalty that is introduced should be stepped or tapered so that smaller firms – who are more likely not to have access from advice from property professionals – pay proportionally less than their larger counterparts.

Given that the rates system is poorly understood by many businesses, we would argue that authorities should have the capacity to dismiss penalties if a business has made a genuine mistake or oversight. For example, new start businesses are unlikely to have a strong understanding of the rates system and shouldn't face penalties.

Questions 13 and 14 – Debt recovery

FSB believes that the introduction of a single national digital interface for the collection and administration of business rates would solve a large number of problems, including those related to debt recovery and business rate rebates.

In the absence of the prompt introduction of such a scheme, the communication of any changes to debt recovery processes should form part of a national communications programme detailing the wider reforms.

FSB believes that businesses faced with extenuating circumstances (e.g. local flooding) should be able to apply to the rates authorities for additional flexibility regarding payment terms.

Questions 15 and 16 – Appeal reforms

Broadly, FSB supports the modernisation of the Scottish NDR appeals system. The move to incorporate appeals into the wider tribunal system must result in a more user-friendly process and a more modern approach.

In principle, FSB could accept a change to allow valuation appeals to increase – in exchange for more frequent revaluations and a more modern rates system. However, without faster improvements to the rates system bureaucracy, many in business may regard the change to allow valuation appeals to increase as unpalatable. Similarly, any charge to lodge appeals will be difficult for firms to bear while the system remains difficult to navigate.

As outlined above, ahead of the next revaluation, a co-ordinated communications campaign should be undertaken by all of the rates authorities and would advise ratepayers of changes to the rates system. The Scottish Government should lead and fund this campaign, in partnership with assessors and local authorities.

If Ministers commit to this change, they should consider the role of property agents and other property professionals in the rates system. Many smaller businesses are encouraged by property professionals to lodge appeals – and many take a share of the savings associated with a successful appeal.

While it remains a key principle for FSB to make the appeals system accessible to those without professional representation, it looks likely that property agents are going to have a role for some time in the future. Therefore Ministers must consider agents' role in advising business owners of the potential risk associated with lodging appeals, and whether agents should share the risk, given they share the reward.

Questions 17, 18, 19, 20, 21 – Avoidance reforms

FSB is aware that Revenue Scotland has adopted a General Anti-Avoidance Rule (GAAR), through the Revenue Scotland and Tax Powers Act 2014.² We would suggest

² General Anti-Avoidance Rule – Revenue Scotland

looking to this rule for principles to design a similar rule for non-domestic rates. However, we would argue that any new rules need to be complemented with resources to modernise the system.

In principle, FSB accepts the need to make the adjustments outlined to ensure that rate reliefs operate in the way that policymakers intended. However, FSB would highlight that there's a risk that new techniques to inappropriately draw down on these reliefs could be developed. Conversely, FSB has a concern that the sort of operators for whom this support was intended could lose out.

Further, in discussion with local authorities, FSB has heard that many non-domestic rates teams within local authorities are under-resourced to check whether property is being used in the way being reporting (e.g. whether the property is currently occupied or being renovated).

FSB would therefore argue that in order for these legislative changes to reliefs to work as intended, Ministers need to ensure that the wider NDR system has sufficient resources. In our view, standardised, nationalised processes for much of the back-office elements of the system would free up resources for monitoring.

FSB would accept the need for some discretion in the application of this policy – especially in relation to the interaction between various reliefs. As well as legislative discretion, local authority NDR teams must feel empowered to grant support.

Questions 23 and 24 – Active occupation

FSB accepts the principle that the Small Business Bonus should generally only be granted to properties that are currently occupied. We would argue for a degree of discretion associated with the application of this policy, especially as it relates to other reliefs.

For example, under the business growth accelerator relief, a business making renovations to a property will not pay no be liable for their new rateable value until a year after the work is completed. However, in our view, if a business needed to vacate their premises while their property was being improved they should not lose their relief.

Further, FSB has made the case to Ministers that they may wish to exclude non-business recipients from the SBBS – utilising any savings from these policy changes to further taper the scheme.

Similarly, town centre and city centres often face problems associated with long-term empty properties – listed or otherwise – and FSB accepts the need for the rates system to encourage landlords to bring them back into use. However, FSB agrees with the Implementation Advisory Group that if active measures are being taken to bring properties back into use – then relief should continue to be granted. We would suggest that the application process for the relief asks landlord to evidence their efforts.

As above, the success of these policy shifts will require sufficient local government resources to monitor the application of reliefs.

Further information

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Experts in Business

The FSB is Scotland's largest direct-membership business organisation. It campaigns for a better social, political and economic environment in which to work and do business. With a strong grassroots structure and dedicated Scottish staff to deal with Scottish institutions, media and politicians, the FSB makes its members' voices heard at the heart of the decision-making process. It is therefore recognised as one of Scotland's most influential business organisations. The FSB also provides a suite of services to help our members reduce the cost and risk of doing good business – from legal and tax protection to business banking.

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