12 November 2020

Comments by the Scottish Property Federation: The Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 Ssi 2020/Xxx

Background

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

Key Points

- **We regret the decision by the Scottish Government to delay the 2022 NDR revaluation. This will perpetuate unfair RVs for many ratepayers across Scotland.**
- **We warmly welcome the decision to carry forward the Barclay review recommendation of a one-year gap between the tone date and the revaluation taking effect**
- **We agree with the Scottish Government that a tone date as planned, of 1 April 2020, would be wrong in the circumstances of the Covid-19 crisis that emerged in mid-March 2020**
- **We would also agree that there is still likely to be a reduced level of new transactional evidence currently available in the market, and this may well continue to be the case for a significant period – it would also be true to say there are relatively few leases reported via Revenue Scotland's LBTT system (less than 5,000 in the year before COVID-19)**
- **Evidence has also begun to be collated about the outcome of existing rent renegotiations, where we are aware of reports of 50-60% reductions in rent– therefore we feel Assessors may yet be in receipt of more evidence than it currently anticipates from renegotiated existing leases, as opposed to new leases where we expect transactions will remain limited in number.**

Overview

2. The first purpose of these important Regulations is to postpone the redistribution of the tax base for Non-domestic rates in Scotland. This means that by the end of March 2023, just before the next revaluation date intended by these regulations, Scottish ratepayers will have endured the current out of date rateable values for nearly six years, and the values themselves will be based on the market of 1 April 2015 – a gap of eight years minus one day. We believe this goes against the recommendations of the Barclay review of Business Rates and is unfair to many ratepayers in Scotland who will continue to pay rates based on outdated assessments.

3. The second purpose of the regulations is to follow a recommendation of the Barclay report by replacing a two-year gap between the valuation date – the Tone date – and the revaluation taking effect. Thus, rather than rateable values being based on 1 April 2015 only coming into

effect on 1 April 2017, the new system is intended for rateable values to be applied one year on from the Tone date. We have always supported this recommendation and therefore we welcome this move.

4. The government has argued, and we agree, that the previous tone date of 1 April 2020 would not have been an appropriate date given the economic shock of lockdown that took place in mid-March. On balance however, we feel that the unfairness and financial distress caused by perpetuating a valuation roll based on the market as at 1 April 2015, at this stage outweighs the concerns raised by the government in its policy note regarding lack of market evidence to inform a revaluation.

5. We urge the Committee therefore to agree with the change to a one-year gap between the tone date and the revaluation coming into effect. This would therefore mean inviting the government to consider new regulations to seek a Tone date of 1 April 2021 and retaining a revaluation of 1 April 2022. We explain below that while we do accept the government is right to be concerned at a lack of new transactional evidence in the commercial property market, there is also a growing amount of evidence in respect of renegotiated rents due to the economic downturn caused by COVID-19. We explain our thoughts in greater detail below.

Market Evidence

6. The government argue that the delay is necessary to allow time for evidence of market activity as the economy recovers. We agree that it is likely that there will be a low level of rental transactions given the wider economic challenges. The government is therefore right to be concerned at the lack of rental transactions and what this means for the revaluation. But there is evidence emerging that is being fed through to the Scottish Assessors Association which we expand on in paragraph 7. More broadly, we question whether reduced evidence of transactions outweighs the concerns we hear from our members about the current unfairness of rateable values. And what happens if market activity remains at low levels and has not improved by 1 April 2022 – would there be a further delay?

7. We are aware of evidence from our members that the renegotiation of rents, has led to rental reductions of between 50-60% to reflect the impact of COVID-19. This would appear to chime with earlier examples of renegotiation of leases that occurred around the first Scottish Quarter day affected by COVID-19 in May. We understand this information will become available to the Assessors if it has not already been communicated to them.

8. Our preferred tone date of 1 April 2021 arises some 13 months after the first COVID-19 lockdown. Depending on the size of business and their relevant financial reporting requirements that apply, landlords and investors will simply not be able to avoid updating the valuations of their properties and related rental information. This means that evidence on existing rental agreements should in many instances be available to Assessors that could support 1 April 2021 as a tone date. Not only this, but the recent legislation enacted by the Scottish Parliament has greatly increased the powers of assessors to request information from any person deemed relevant to the assessment of a particular property.

9. It should also be noted that there is some basic rental evidence regularly collected by the Scottish Government in the form of lease returns for LBTT. These are not valuation assessments,

but on a lease return a non-domestic occupier is required to submit details of actual annual rent agreed. So, the government is already in receipt of more than 1600 such lease returns since April. For the whole of 2019-20, Scottish lease returns totalled less than 5,000 in number so with a further six months to receive LBTT lease returns, the government could well receive some 60 to 70% of basic rental evidence based on these returns. This could provide a useful indication if analysed by sector and could aid assessors to highlight key sectors and locations.

10. There is also evidence within the market on the proportion of rent that is being paid under the current restrictions. This is often broken down by market sector and again would inform perspectives of where the commercial property market is really at currently.

Material Changes in Circumstances

11. Earlier this year the right to make a rating appeal based on a Material Change of Circumstances was restricted. One of the reasons the government gave for restricting the grounds for lodging appeals based on MCCs is that more frequent revaluations should reduce the need for rating appeals, because the tax-base will be more regularly updated. MCCs are based on the ability of a ratepayer to have beneficial occupation of their properties. The COVID-19 experience therefore makes a stark example of why this right to appeal is important. It is therefore ironic that with MCCs restricted there is now a proposal to delay the revaluation, thus retaining the current unfairness of the RV base for a further year and at the same time removing rights to appeal based on MCCs.

12. We are aware that the Scottish Assessors received close to 50,000 MC applications ahead of their 31 March 2020 deadline, based on the COVID-19 crisis. It is our understanding that the SAA have very recently begun discussions with commercial property firms to look at the detail of these applications, with considerations of these some cases expected we believe in mid-January. These discussions and hearings will also offer evidence that could be used to inform a tone date of 1 April 2021.

Future implications for Revaluations

13. The government also observes that revaluations are intended to redistribute the tax base. We agree, but this decision to postpone the revolution therefore, by definition, is seeking to ensure that there will not be a redistribution of the tax base and therefore maintain an unfair distribution of tax liability. The Scottish Parliament has voted to establish more frequent revaluations to keep the tax base up to date and we have supported this policy.

14. Few revaluations are fiscally neutral and the SPF has supported the Scottish Government's long standing policy of not applying 'downwards' phasing at revaluations, whereby those ratepayers whose businesses are valued to be in lower value properties are not artificially maintained in higher value areas (as was the policy for the retail sector in England at the 2017 revaluation). We would hope the Scottish Parliament would not be tempted to return to this policy which it has avoided since 2010. Neither, we hope, will the government be tempted to re-distribute the tax burden to other sectors beyond their actual market evidence. This approach would again fail the test of fairness.

Concluding remarks

15. The SPF is acutely aware that the Scottish Parliament has only just brought into being its first Non-Domestic Rates Act for many years. We feel it is clear, however, that the use and occupation of non-domestic property has been fundamentally changed by the experience of COVID-19. For example, the high level of occupation and use of office space, the footfall for retail locations and hospitality could be permanently altered by societal and consumer change accelerated by COVID-19. Certain key industries that support hospitality such as our leading airports, already see little possibility of a return to previous levels of business for a number of years. COVID-19 is not wholly responsible for all of these changes, the reality of administration or CVAs (Company Voluntary Administration) has been hitting retail in particular for several years unfortunately and we do not see this changing as a result of the delayed revaluation, which merely puts off addressing the issue for a year.

16. We do not feel that the Impact Assessment which accompanied the draft Regulations also correctly reflected the impact on businesses. Rates are a real and absolute liability that must be considered by businesses. However, postponing this non-domestic property rates revaluation will therefore simply maintain an unfair distribution of the tax base and penalise ratepayers accordingly. For ratepayers who were still to see recovery from the financial crisis, for those in the north-east still on rateable values dated to before the major oil price cash, a further delay to the revaluation will be a significant blow.

17. The Scottish Government has introduced unprecedented rates relief measures to business rates in response to COVID-19. The 100% relief for retail, hospitality and leisure was a vital support and, we expect that there will be a need for further relief as we near 1 April 2021. However, relief does not change the tax base it simply alleviates those in relief with a benefit for a period of time. While we do urge the government to continue its relief for ratepayers significantly impacted by COVID-19 measures, we believe the more sustainable approach is to rebase the tax base properly.

18. We would be pleased to answer any further questions regarding our comments at the Committee’s convenience.

David Melhuish, Director, Scottish Property Federation, 07387 272376, dmelhuish@bpf.org.uk