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Rt Hon Sajid Javid MP,
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Sent via email: Sajid.javid@communities.gsi.gov.uk
cc. Secretary of State for Justice (secofstate@justice.gsi.gov.uk)

11th October 2016

Dear Secretary of State

"Check, Challenge, Appeal: Reforming business rates appeals – consultation on statutory implementation"

The British Hydropower Association [BHA] is the professional trade body representing the interests of the UK hydropower industry and its associated stakeholders in the wider community at regional, national and global levels.

The BHA is writing to express concerns regarding certain proposals within the above consultation. Our specific concerns are around paragraphs 30 and 31 of the consultation on statutory implementation of the Check Challenge Appeal process for the forthcoming rating lists, and regulation 5 (b) of the draft Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2016.

Background

In all of our responses to consultations regarding proposed changes to the Business rates system within England, we have been consistent in our appeal for transparency and stability for the system, and we have also commented that the appeals backlog is a symptom of a lack of transparency as opposed to any systemic failure. The proposed change will further compound a lack of transparency and instability within the system as cases are likely to be taken to the courts.

The change proposes to prohibit the Valuation Tribunal for England (VTE) from ordering an alteration to the rating list, following a successful appeal hearing where the VTE considers that the assessment is inaccurate, but the difference between the VTE's determination of the correct figure and the current figure falls within "the bounds of reasonable professional judgement".

This proposed restriction is wholly unfair to ratepayers who have successfully made their case to a VTE hearing but will be denied the appropriate adjustment to their assessment because the difference is alleged to fall within an arbitrary tolerance of alleged professional judgement.

It would be unreasonable to impose on members of the VTE, who are themselves 'lay members' not necessarily with relevant professional qualifications, the duty to determine whether a valuation is within the bounds of reasonable professional judgement.

We believe that it is unprecedented in UK tax legislation for an independent tribunal to be impeded from making and giving effect to its decisions. We would hope that this is not a pilot for the possibility of similar arrangements for other taxes such as personal taxes and capital gains tax. If it seems inconceivable to apply such restrictions to other taxes, then why is it appropriate to apply to business rates?

International Competitiveness

The UK has voted to leave the European Union and will need to remain competitive within the commercial sector, continuing to attract companies to base their companies here. In 2016/17 the Universal Business Rate is 48.4 pence with a supplement of 1.3 pence for larger properties – a tax rate of nearly 50% for larger properties, UK property taxes are amongst the highest anywhere in the world. With the tax at such a high level, a restriction on the effectiveness of the appeal system seems unworkable; you can't attract business by offering some of the highest rates amongst OECD surveyed economies, then if they successfully challenge a rateable value at a Tribunal hearing, forcing the business to continue to pay more than the value determined by the Tribunal.

Previous attempts

Previous proposals concerning so-called "blunting" of appeals were ultimately rejected as unfair to taxpayers by a review panel of ratepayers, local authorities, and rating professionals. Of 114 respondents to a consultation around blunting, only 4 respondents agreed with the proposal, and the views of the industry have not changed. Indeed, the continual rise in the tax rate (Uniform Business Rate), from 41.6p in 2000, to 49.7p for large properties in 2016, makes fairness more important than ever.

As there has at this stage been no decision about more frequent revaluations, it means that if this draft legislation is introduced, a ratepayer who has successfully challenged their valuation could be over-paying tax by 10% or more for a period of up to five years because of a statutory restriction on the right of the VTE to correct matters. The aim of 'Check, Challenge, Appeal' was to reduce appeals, but what is proposed seems more likely to create a rise in legal disputes.

Conflicting commitments

The Government last year affirmed their commitment to the 2002 Monterrey Consensus and the 2008 Doha Declaration at a UN meeting in Addis Ababa, agreeing to: 'improve the fairness, transparency, efficiency and effectiveness of our tax systems'. The proposed changes are not in the spirit of this agreement, and they are also open to legal challenge under international legislation relating to human rights, and as a breach of the domestic understanding of natural justice and the independence of the Tribunal system.

There is also the possibility that even if not legally challenged the applicability of the principle to certain cases can and will be challenged as 'outside the bounds of reasonable professional judgement'.

The BHA and those we represent have often voiced concerns regarding the changes to the appeals process, especially without a thorough review of reliefs and exemptions. However the changes we have identified within this letter have the potential to throw the entire system, including its ability to be a regional funding stream into disrepute, disadvantaging smaller business owners, often with less access to professional guidance.

We believe it would be unreasonable to impose on members of the VTE, who are themselves 'lay members', not necessarily with relevant professional qualifications, the duty to determine whether a valuation is within the bounds of reasonable professional judgement. We hope that you will reconsider and withdraw this proposed change.

Yours Sincerely

Simon Hamlyn

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