Valuation (Amendment) (No. 2) Bill, 2012

Chambers Ireland – Comments and Recommendations

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Summary Recommendations

1. Commercial properties must share the cost of the services they use; therefore, all exemptions must be removed.
2. The Bill must address the concerns of the business community. Revisions of the value of properties must reflect the profitability of companies in the current economic climate.
3. Businesses must have clarity and certainty over how their net annual value is set.
4. The Annual Rate of Valuation set by local authorities must be fair. There should be a mechanism in place to ensure the ARV set in neighbouring authorities do not hinder competition between businesses in each.
5. Any new Bill ought to include a 'hardship clause' and take account of ability to pay.
6. Steps must be taken to ensure that the Tribunal is not overwhelmed by appeals following the removal of the right of first appeal to the Commissioner of Valuation.
7. Further outsourcing of elements of the revaluation process to allow for an efficient and cost effective revaluation process.
8. Where the Valuation Office inserts a new value, the occupier should not automatically be liable to pay arrears and interest on the same.
9. 'Targeted reductions' on rates must be introduced to guarantee revenues are sustained at a level that allows councils to provide a range of services while ensuring this essential sector of the economy continues to grow.
10. Rates must be flexible and sensitive to changes in the economy and the business environment. We believe that the rateable value of properties must be reassessed every five years at a minimum.
11. Compensation must be made available for tenants who, following revaluation, are found to have been paying excessive rates.

Introduction

Commercial rates are a form of taxation levied by local authorities on the occupiers of commercial and industrial property. They are collected to pay for the general provision of services by local authorities.

Commercial rates are currently the third biggest cost to business after labour costs and rent. While both of these have adjusted downwards in line with Ireland's economic situation, commercial rates have not.

As an organisation that represents the interests of the business community, Chambers Ireland views the issue of commercial rates from two main perspectives.

Firstly, we recognise that Ireland is currently in an unsustainable fiscal position: efforts to get the public finances back on a firm footing must be maintained and strengthened.

Secondly, we are concerned about the costs of doing business in Ireland. The way in which commercial rates are currently levied can be seen as a threat to the competitiveness and profitability of small and medium sized businesses (SMEs). Commercial rates must reflect basic principles such as fairness and equity.

This becomes an issue about how local authorities can generate sustainable income streams. If small businesses continue to carry the burden of financing local authorities they will be forced out of business. This would lead to the end of a large part of the commercial rates base.

Furthermore, this outcome would run counter to many of the Government's policy priorities surrounding economic sustainability and development, and the Jobs Action Plan.

Valuation Act, 2001

Following the introduction of this Act, the amount paid in commercial rates for each property is calculated by a simple mathematical formula.

Every local authority sets an annual rate of valuation (ARV) for the area over which it has jurisdiction. The rateable valuation for each property is then set by the Valuation Office. The rate liability (amount paid) for each property is calculated by multiplying these two figures together.

The rateable valuation is based on the rental value of the property on a specified date. So, if a property is valued at having a rental value of €10,000 and the local authority sets the ARV at 0.40, the rate liability will be €4,000.

Under the Valuation Act of 2001, provision was made for a revaluation of all commercial and industrial property in Ireland. This process began in late 2005 in the local authority area of South Dublin County Council and was followed in Fingal County Council and Dun Laoghaire Rathdown County Council. The process began for Waterford and Limerick in early 2012.

According to the Valuation Office: "A revaluation is the production of an up-to-date Valuation List of all commercial and industrial property, within a local authority area, by reference to property rental values at a particular date. The purpose of a revaluation is to bring more equity and fairness to the local authority rating system. Following a revaluation there will be a much closer and uniform relationship between the rental values of properties and their commercial rates liability."[1]

It is recognised that the rate liability of some properties will rise as well as fall. The system is designed to make the process more fair and equitable while maintaining the overall revenue collected.

However, the specified date on which the rateable value is based may result in the rate liability being out of synch with current market realities. For example, the figure used to calculate the rate liability in Fingal is based on open market rental values for 2005.

Valuation (Amendment) Bill, 2012

This Bill proposes to amend existing valuation legislation in a number of areas and to accelerate the process of revaluation of all rateable property in the country, as legislated for in the Valuation Act, 2011.

The Bill also allows for new approaches to valuation including self-assessment and external service delivery options: outsourcing of the valuation function will be considered where appropriate.

There is much in the Bill of worth. Chambers Ireland welcomes any move to make the process more open, transparent and streamlined.

However, as the Bill makes its way through the legislative process, we would encourage members of the Dáil and Seanad to consider a number of recommendations (see below).

Property Tax and commercial rates in the UK

Until the introduction of the Household Charge, Ireland had no property tax on residential property. Transaction taxes were the only way to raise revenue from residential property.

We believe much can be learned from the UK model where rates are applied to both commercial and residential property. With regards to residential properties each household (excluding those with specific exceptions) pays council tax.[2]

The Valuations Office Agency sets the rateable value of commercial properties. This is reassessed every five years. Current rateable values are in line with rental values for 1st April 2008 and are due to be updated next year. This ensures they remain responsive to current market values and economic conditions.

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[1] http://www.valoff.ie/revaluation.html

[2] http://www.direct.gov.uk/en/HomeAndCommunity/YourlocalcouncilandCouncilTax/CouncilTax/index.htm

Through the Businesslink website commercial property owners can estimate their bill, check the rateable value of their property, receive information on how to appeal against a decision and access information on business rates relief schemes.[3]

The business rates deferral scheme gives businesses the option of spreading the Retail Price Index increase in their 2012-13 bill over three years to help them manage cash flow in the current economic climate.

Eligible ratepayers receive small business rate relief at 100 per cent on properties up to £6,000, and a tapering relief from 100 per cent to 0 per cent for properties up to £12,000 in rateable value for that period.

Furthermore, Businesses that start up in one of 21 new enterprise zones, or relocate to one over the course of the current parliament, qualify for a 100 per cent business rate discount for five years. This discount will be worth up to £275,000 over five years.

A similar responsiveness to market variance and flexibility based on ability to pay would make commercial rates in Ireland less of a burden on the business community.

[3] http://www.businesslink.gov.uk/static/html/statichome.html

Detailed Recommendations

1. Chambers Ireland favours an approach to commercial rates that is based on a fair 'user pays' model. To this end we fail to see the virtue in allowing some properties to remain exempt from paying commercial rates. Departments of State, offices of the public service, the Defence Forces, the Garda Síochána and prisons are all significant users of the services provided by local authorities; therefore, they should be responsible for contributing to their upkeep and maintenance. Furthermore, under the new Bill many would not only be exempt, they would no longer be visible in the valuation system.

2. As it stands, we believe the Valuation Bill, 2012 does not address the main concerns of the business community.

- Section 2 of the Bill addresses the definition of "material change of circumstances" as set out in section 3 of the 2001 Act. However, it fails to recognise that the single greatest change in the circumstances of most businesses is its profitability in the context of contemporary economic conditions.
- The committee must include this as a valid reason for a property to be considered for a revision of rateable value. Many businesses have experienced significant reductions in their profitability; however, there is no corresponding reduction in the cost of doing business.
- No consideration is given to the concerns of the business community relating to Section 49 of the 2001 Act. Again, there is no regard for a fall in the profitability of businesses or a drop in the rental value of the property.
- There must be a change in emphasis from businesses being valued on their *reserve* output to being valued on their *actual* output. One example of this is quarries that, despite holding considerable reserves, have seen a dramatic decrease in their output, and subsequently their profits, due to the collapse of the construction sector.
- One possibility is for the Valuation Office to differentiate between *structural* and *cyclical* falls in profitability. While cyclical falls in profitability may not justify a revision of rateable value, long-term structural declines may warrant such action.

3. One significant area of concern relates to Section 22 of the Bill. Much more clarity and certainty is required in relation to the setting of net annual value. 'A manner that the commissioner considers appropriate' seems to be excessively arbitrary. Also, the possibility of values being decided for entire 'classes' of properties is too crude to take account of the subtleties of the market.

4. While the valuation of individual properties is of considerable importance, the Annual Rate of Valuation set by local authorities must also be fair, as this will impact on all businesses. For instance, it is possible that Dublin City Council will attempt to introduce an ARV of 0.264 post revaluation. This compares with 0.144 in Fingal, 0.17 in Dún Laoghaire - Rathdown and 0.162 in South Dublin. We appreciate that this disparity is due to the multiplier in Dublin City being based on rental values from April 2011, as opposed to September 2005, as was the case in the other three authorities. However, that is of no comfort to struggling businesses in Dublin.

It will have a negative impact on businesses in two respects; firstly we estimate that it could result in an increase in rates of up to 100% for many businesses; and it will harm their competitiveness with businesses in neighbouring local authorities, particularly retailers, whose business is 'footfall dependent'.

Central Government must have a coordinating power to ensure that the ARV set by local authorities is fair and equitable. Even allowing for a revaluation at no less than every five years and no more than every ten years, the ARV must reflect current economic realities. Furthermore, Government must ensure there are no significant disparities between neighbouring local authorities.

5. While the new system is designed to remove a series of anomalies from the current system, we are concerned that a number will continue to have a negative impact on the business community. New tenants must only become responsible for the rates on a property from the date of occupation. Currently, businesses that enter a property in the course of a year can be liable for the rates for that entire year. This is clearly a barrier to enterprise.

6. We believe any new Bill ought to include a 'hardship clause' and take account of ability to pay. A 'rates holiday' for new occupiers could provide the necessary inspiration to individuals considering starting a new business. This would lead to potential job creation. We believe that further consideration should be given to the implementation of a range of schemes, such as those available in the UK, that offer struggling businesses the opportunity to access rate relief or defer payment to assist with cash flow.

7. There are a number of concerns arising from the removal of the right of appeal to the Commissioner of Valuation (Section 15). There is a possibility that the Tribunal will simply be overwhelmed by the amount of appeals it directly receives. The Tribunal was put under intense pressure during the Dun Laoghaire-Rathdown appeal process, and while there is provision in the Bill to extend the deadline for making submissions from 28 to 48 days, this is unlikely to be in place before the Dublin City revaluation.

8. However, we are concerned that the process of self-assessment may be an additional administrative burden on small business owners. Our preferred method of revaluation would be the outsourcing of elements of the revaluation process. This would allow for an efficient and cost effective revaluation process, and allow the office of valuation to continue with its core functions.

9. Furthermore, with regards to self-assessment, we have concerns about the process whereby the Valuation Office can insert a different amount onto the valuation list. In cases where it exceeds the self-assessed valuation, arrears would be payable plus interest. This seems like an excessive punishment for what may have been a genuine mistake. Also, the bill does not envisage a reduced rate being inserted by the Valuation Office. If the revaluation process illustrates that a company has been paying excessive rates some form of compensation or retrospective rate should be made available to them in order to reimburse previous overpayment.

10. Chambers Ireland believes that targeted reductions on rates would be an effective way to ensure revenues are sustained at a level that allows councils to provide a range of services while ensuring this essential sector of the economy continues to grow.

11. It is essential that rates remain in line with open market rental value. Rates must be flexible and sensitive to changes in the economy and the business environment. We believe that the rateable value of properties must be reassessed every five years at a minimum.