



Ministry of Housing,
Communities &
Local Government

Business rates in multi-occupied properties

Consultation on reinstating the practice of the Valuation Office Agency prior to the decision of the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53

Summary of Responses and Government Response



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April 2018

ISBN: 978-1-4098-5221-6

Contents

Introduction	4
Reinstating the practice of the Valuation Office Agency prior to the Mazars decision	4
Unoccupied hereditaments	4
Voids between hereditaments	5
Other improvements to the Bill	5
Implementation	5
Other matters outside of the scope of the consultation	6

Introduction

1. Until recently, the usual practice of the Valuation Office Agency was to apply one rating assessment to contiguous (touching) business properties occupied by the same ratepayer. This was a widely understood and accepted practice. In 2015 following the Supreme Court judgment in *Woolway (VO) v Mazars* [2015] UKSC 53, the Valuation Office Agency changed its approach and now each contiguous unit of rateable property is required to have its own rating assessment and rates bill irrespective of whether they are occupied by the same ratepayer. This disturbed a stable and accepted practice and affected the rates bill of some ratepayers.
2. At Autumn Budget 2017 the Chancellor announced that the Government will legislate retrospectively to address this change and reinstate particular features of valuation practice which applied before the judgment. The Government published a consultation document and draft Bill to seek views on how to deliver and implement this commitment. The consultation closed on 23 February 2018.
3. A total of 53 responses to the consultation were received. The local government sector and associated organisations accounted for 27 responses, 24 responses were from the rating surveyor sector and 3 responses were from ratepayers or other sector bodies. The Government also met with stakeholders during the consultation period to hear their views and suggestions.

Reinstating the practice of the Valuation Office Agency prior to the Mazars decision

Question 1: Does the draft Bill (Annex A of the consultation document) put in practice the policy intention as set out in the consultation document to reinstate the practice of the Valuation Office Agency prior to the Mazars decision?

Question 2: if your answer to question 1 is no, why and how should the draft Bill be amended to reinstate the practice of the Valuation Office Agency?

4. Of those that directly responded to these questions (48), 39 agreed with the Government's approach in the draft Bill (including 11 who suggested changes to improve the wording of the draft Bill's provisions).
5. Where respondents noted concerns with the draft Bill, they broadly fell into the following areas.

Unoccupied hereditaments

6. There were 10 respondents who were concerned that although the Supreme Court had changed the practice in relation to unoccupied property, this was not covered in the draft Bill. They suggested that the revised Bill should be extended to unoccupied properties although there were mixed views on how this should be achieved.

7. The Government agrees with this in principle and has amended the Bill to include unoccupied properties. The normal approach in the Valuation Office Agency was to not change how the property was assessed when it fell vacant. The new provisions in the Bill seek to reinstate this previous practice as much as is practicable.

Voids between hereditaments

8. There were 8 respondents who were concerned that service voids within walls or between floors or ceilings might mean hereditaments would not be considered to be contiguous. Respondents felt this did not reflect the previous practice of the Valuation Office Agency. In light of these concerns, the Government has amended the Bill to make it clear that spaces in walls or ceilings do not prevent two properties in the same occupation being considered contiguous.

Other improvements to the Bill

9. Respondents also made a number of suggestions to improve the clarity of the Bill. In particular, in respect of vertically contiguous property, the approach in the draft Bill was to consider whether a floor of one hereditament formed all or part of the ceiling of another. Although the principle of what the Government was looking to achieve was generally accepted, there was concern that the approach adopted for vertically contiguous property was confusing. In light of these concerns the Government has amended the Bill so that it now considers whether the hereditaments are on consecutive storeys of a building and one is in part directly above the other. The Government believes this approach will be more easily recognisable to practitioners.

Implementation

Question 3: Do you agree that backdated changes to the 2010 rating list to reinstate the previous practice of the Valuation Office Agency should only be made as a result of a proposal from the ratepayer (or a previous ratepayer)?

Question 4: Do you agree that the former 2010 list appeals process should apply to proposals for backdated alterations to the 2010 rating list?

Question 5: If your answers to questions 3 or 4 are no, why and what arrangements should apply for implementation of this policy to the 2010 rating list?

10. Of those that directly responded to these questions (47), 38 agreed that backdated changes to the 2010 rating list to reinstate the previous practice of the Valuation Office Agency should only be made as a result of a proposal from the ratepayer. There were 39 who agreed with using the former appeals structure for appeals on the 2010 rating list (and not the new Check Challenge and Appeal system).
11. The main concerns raised in relation to implementation on the 2010 rating list were that a burden will fall on ratepayers to make a new proposal and that the Valuation Office Agency should be more proactively engaging with councils and ratepayers to

change the 2010 rating list (4 respondents). There were 3 respondents who said that no new appeal rights should be allowed on the 2010 rating list.

12. Given the widespread support, the Government is proceeding with the proposals for implementation on the 2010 rating list as set out in the consultation document. The Government considers this as the best way to protect the interests of ratepayers in respect of backdated bills on the 2010 rating list. This will be delivered through secondary legislation under existing powers and the Government will consider the regulations in draft with rating practitioners before proceeding.

Question 6: Do you agree that a ratepayer should be able to make a prioritised “check” of their rateable value on the 2017 rating list to apply the legislation to their assessment? This would be in addition to the Valuation Office Agency’s normal duty to maintain the rating list.

Question 7: If your answer to question 6 is no, why and what arrangements should apply to reinstate the practice prior to the Mazars decision?

13. Of those that directly responded to these questions (44), 35 agreed with the Government’s suggested approach to implementation on the 2017 rating list.
14. Respondents raised concerns that the existing appeal system for the 2017 rating list does not currently allow for checks specific to the Bill and will create a burden on ratepayers (5 respondents), and that the Valuation Office Agency should deal with all checks equally and not prioritise checks for changes arising due to the Bill (4 respondents).
15. Given the widespread support, the Government is proceeding with the proposals for implementation on the 2017 rating list as set out in the consultation document. The Government recognises the need to ensure that small businesses can access and effectively use the new appeals system including for those cases to reinstate the practice prior to the Mazars decision.

Other matters outside of the scope of the consultation

16. There were 12 respondents, of which 8 were from local government, who raised concerns regarding the financial consequences for local government as a result of the Bill. This is outside of the scope of the consultation. Prior to the Supreme Court decision the practice of the Valuation Office Agency in relation to contiguous properties in the same occupation was widely accepted and understood. The change following the Supreme Court decision was fundamental to the meaning of a hereditament, was not sought by either party to the appeal and was unexpected. The Government therefore views the additional revenue flowing from that decision as an unexpected windfall. Accordingly, the Bill will return this windfall to ratepayers and no compensation will be payable to local government.
17. Some respondents suggested that the Bill should be amended so that car parking spaces are included in the rating assessment of associated buildings where they are in the same occupation. However, the stated practice of the Valuation Office

Agency prior to the Supreme Court decision, in line with previous case law, was that car parking which was not contiguous with a property should be separately assessed for business rates. Therefore, amending the Bill in the way suggested by respondents would retrospectively change the stated previous practice of the Valuation Office Agency in respect of car parking. This is beyond the intention of the Government's policy and, therefore, outside of the scope of the consultation.