Business rates avoidance

Summary of survey findings and recommendations

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Around one per cent of total business rates income, or £250 million, is lost to business rates avoidance each year. We are calling on the Government to bring forward changes to legislation to tackle this avoidance, along the lines of those being proposed in Wales and Scotland, to be implemented in 2021.

Introduction

The Local Government Association (LGA) is concerned at the amount of business rates avoidance and has called for action to be taken to reform the law over a number of years. In 2014[1] we carried out a survey which estimated that around £230 million per annum was lost to business rates avoidance. We presented the results in the form of a submission to a Treasury discussion paper[2] on business rates avoidance.

In response to the discussion paper's submissions the Government said in July 2015 that the scale of avoidance confirmed that business rates avoidance needed to be addressed, and the development of anti-avoidance measures would be announced in due course. In January 2017, during the debate on the Local Government Finance Bill the then Parliamentary Under-Secretary of State for Communities and Local Government said "I would welcome the opportunity to work with the LGA, the Charity Commission and others to explore what legislative and non-legislative steps we might take to protect the system and tackle business rate avoidance".

However since that time no action has been taken by the Government to tackle business rates avoidance. Therefore in July 2019 we carried out a repeat of the 2014 exercise and surveyed councils responsible for collecting business rates to gather information on estimated amounts of business rates lost due to avoidance in their local areas.

Summary of findings

On average, respondents estimated that the total amount of business rates lost to avoidance in their local authority area in 2017/18 was £798,000. Using this average, it is estimated that the overall scale of avoidance in England is £250 million, which equates to one per cent of the overall total business rates payable.

This is the same percentage as found by the 2014 survey. However the percentage reporting business rates avoidance of over two per cent has risen from six per cent to 15 per cent.

Repeated short-term periods of occupation was the method of avoidance most commonly identified among respondents, and this also had the highest average loss at £396,000. Vacant properties being leased to a charity with proposals for the next use to be wholly or mainly used for charitable purposes was the second most commonly identified method and the average amount lost for this was £153,000. This was also the second most commonly used method in the 2014 survey.

The practice of ratepayers using third party/ rates mitigation companies to facilitate arrangements in return for a percentage of the rates saved (ie marketed avoidance schemes) was widespread or very widespread in the opinion of almost half of respondents.

1 www.local.gov.uk/sites/default/files/documents/business-rates-avoidance--7b4.pdf

2 www.gov.uk/government/consultations/business-rates-avoidance-discussion-paper

Almost half of respondents had taken or were taking legal action against those avoiding. Among those councils who had taken legal action the variables which they believed have led to success were picking cases most likely to win, those with sufficient evidence and having a good legal team. Of those that were not taking action, over half reported that this was because the schemes in use were within the law.

Respondents agreed that more integrated working with Her Majesty's Revenue and Customs (HMRC), Charity Commission and Companies House would help tackle avoidance. They also made a number of their own suggestions including changes to the legislation/regulations, information sharing and more joined-up working with other organisations.

Only three per cent of respondents felt that councils have adequate powers to tackle avoidance, 84 per cent felt they didn't. When asked to specify which powers they lacked in order to tackle avoidance, most cited shortfalls in the legislation/regulations.

Respondents suggested reform of empty property regulations, clarification and guidance on occupation and a duty to notify billing authorities of changes in occupation for liability as the anti-avoidance regulations and package of changes that should be put in place as a minimum to tackle avoidance and improve success in the courts.

Recommendations

It is clear that the level of business rates avoidance has not changed, compared with a similar survey conducted in 2014.

Action is required. Although the UK Government has not brought forward any proposals in respect to England, in both Wales and Scotland packages of measures are being proposed to be implemented in 2021. In Wales the measures include:

- Exploring a new legal obligation on ratepayers to notify their local authority of a change in circumstances which would affect their rates bills.
- A new legal power for local authorities to request information from ratepayers and third parties to aid authorities in discharging the billing and collection function.
- A new legal power for local authorities to enter and inspect non-domestic properties (hereditaments) to verify information relevant to the billing function.
- Changes to the arrangements for empty property relief. This will include lengthening the period of temporary occupation, which leads to repeated cycles of relief, from 42 days to six months; removing zero-rating on empty properties that, when next in use, it appears they may be used for a charitable purpose; and providing local authorities with local discretion to grant zero rating in genuine cases where a charity needs to own or lease an empty building and not make use of it.
- Working with local authorities to publish a list of ratepayers in receipt of rates relief, subject to a list complying with the General Data Protection Regulation.

In Scotland the Non-Domestic Rates (Scotland) Bill 2019 (Part 4) is proposing a new power for ministers to make anti-avoidance regulations with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial.

The Government should, as a matter of urgency, on the basis of the evidence in this survey, bring forward a similar package of measures to apply in England, to come into effect with the revaluation in 2021. We are very happy to work with the Government on this. The forthcoming Bill to bring forward the next business rates revaluation to 2021 and move business rates revaluations from a five-yearly cycle to a three-yearly cycle provides an ideal opportunity to bring forward amendments to primary legislation. Some changes, such as to the time limits for empty property relief, could be done through amending secondary legislation.

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