

## **EXPLANATORY MEMORANDUM & REGULATORY IMPACT ASSESSMENT**

### **Explanatory Memorandum to The Non-Domestic Rating (Miscellaneous Provisions) (Amendment) (Wales) Regulations 2008**

This Explanatory Memorandum has been prepared by Local Government Finance Division and is laid before the National Assembly for Wales.

(i) **Description**

The rateable value of a non-domestic hereditament is ascertained by reference to the rent at which it is estimated the hereditament might reasonably be expected to be let from year to year. In those cases where there is no more direct evidence of rental value, the rateable value of a non-domestic hereditament is instead ascertained by decapitalising the estimated total capital value of the hereditament. These regulations prescribed the decapitalisation rates to be used.

(ii) **Matters of special interest to the Subordinate Legislation Committee**  
None.

(iii) **Legislative Background**

These Regulations will be made under paragraph 2(8) of Schedule 6 (Non-domestic rating: valuation) of the Local Government Finance Act 1988. The power of the Secretary of State to make regulations was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. This power is now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Under paragraph 2(8) the Welsh Ministers may make regulations providing that, in applying the preceding provisions of that paragraph in relation to a hereditament of a prescribed [class], prescribed assumptions (as to the hereditament or otherwise) are to be made. This provision empowers the Welsh Ministers to prescribe the Decapitalisation rate and has been exercised in relation to all rating lists compiled since 1 April 1990.

The Regulations will follow the negative resolution procedure which means that they will be made and laid before the Assembly but will not be brought into force for 21 days from the date of laying.

(iv) **Purpose and intended effect of the legislation**

Before 1990, rating valuers and the courts had a great deal of difficulty in deciding on the appropriate decapitalisation rate to be used in non-domestic rating valuations. As a result there was extensive litigation on this issue following each revaluation. Therefore, since 1990, the government has prescribed the appropriate decapitalisation rate to be used in contractor's basis valuations.

For the revaluations that took place between 1990 and 2005, two decapitalisation rates were set. A lower decapitalisation rate was set for education, healthcare and defence hereditaments.

The Welsh Assembly Government prescribes parts of the rating valuation process only for those industries or occupiers where disputes regarding the appropriate rate are most likely to arise. These are:

- educational or health care properties,
- local government properties,
- Crown properties,
- large industrial properties,
- pipelines,
- sewage treatment works,
- airports and airfields, and
- mineral works
- public conveniences

These draft regulations amend Regulation 2 of the Non-Domestic Rating (Miscellaneous Provisions) (No 2) Regulations 1989 (valuation on the contractor's basis) and set a lower decapitalisation rate of 2.97% and a higher rate of 4.5% in any other case in respect of the 2010 non domestic rating lists. The Regulations make no change to the classes of business that the lower and higher decapitalisation rates apply to, but a hereditament which is wholly a public convenience is added to the lower rate.

(v) **Implementation**

This legislation will come into force on 11 December 2008.

(vi) **Consultation**

A consultation was undertaken between 21 August and 10 October 2008.

**Regulatory Impact Assessment –**

(a) **Options (for achieving the policy objective – as set out in paragraph (iv) above) –**

Other options were to make no change or to set a lower rate.

If no change to the current rates had been made, the aggregate rateable values of hereditaments valued using this method would have increased by more than the average on Wales, thereby shifting the overall rate burden from the private to the public sector. If a lower rate had been set, other classes of property would have to fund the reduction of take from rates from these hereditaments by shifting the overall rate burden from the public sector to the private sector.

**(b) Benefits**

These Regulations should ensure that the average overall increases in rateable values of businesses valued using this basis will be roughly in line with the Welsh average, thereby avoiding the potential negative consequences of setting a different rate outlined in paragraph (a) above. They should also ensure that the rateable value of a hereditament which is used wholly as a public convenience will increase less than if it had not been moved to the lower rate.

**(c) Costs**

The Welsh Assembly Government will incur no costs as a result of these making these Regulations.

**(d) Competition Assessment**

This has been scored against the competition filter test which indicated that there should be no detrimental effect on competition,

**(e) Consultation**

A consultation on these proposals was undertaken between 21 August and 2 October 2008.

There was general support in the consultation for continuing to prescribe a decapitalisation rate, The main comments were suggestions that some classes of property should be moved from the lower to the higher rate, and criticisms that the approach proposed by the Welsh Assembly Government is geared towards obtaining a pre-ordained outcome - ie that the average overall increases in rateable values of businesses valued using this basis will be roughly in line with the Welsh average, as opposed to a more "scientific" approach based on precedents established prior to the introduction of prescription in 1990, or estimates of the cost of capital.

The Valuation Office Agency (VOA) has estimated that the 2 rates in these Regulations should achieve this. However, within this average there will be variations, and the rateable value of some hereditaments will probably increase by significantly more or less than the average, This is a feature of the rating system, and there is no way of avoiding this whatever decapitalisation rate is set.

Whilst there is some justification in the comments on the Welsh Assembly Government's approach, there is no consensus as to which of the other methods should be used to calculate a decapitalisation rate, or what the outcome would be if any given method was used.

Some respondents suggested moving certain classes of property from the higher rate to the lower rate. This would have the overall effect of changing limiting any changes in their valuation to below the Wales average, or even reducing them.

However the VOA advise that

- this would mean that other classes of property would have to fund the reduction of take form rates by shifting the overall rate burden from the public sector to the private sector.
- Any attempt to define museums and leisure centres might risk of the inclusion of commercially operated tourist attractions, sports centres and “health clubs”. The likely consequence of this would be a stimulus to appeals as private operators would seek to attempt to justify the use of the contractor’s basis merely in order to benefit from the lower decapitalisation rate, whereas at present the contractor’s basis is not used for these commercial operations.
- Public libraries are a fast changing class and are becoming more and more mixed with community centres. It would be difficult to provide a definition of a community centre, and also difficult to define “library” so as to exclude those libraries which are in retail parades and currently valued satisfactorily on direct rental evidence drawn from similar retail units. To bring these within the ambit of the lower decapitalisation rate would be likely to stimulate new debate about the method of valuation and increase the appeal rate.

The suggestion to move a hereditament which is a public convenience to the lower decapitalisation rate, was agreed and provision made in the Regulations, as their aggregate rateable value is so low as to not have any identifiable effect on the overall burden between the public and private sector. It could be a practical way of reducing the running costs for these facilities, thereby helping local authorities to maintain the provision of these services, in line with the Welsh Assembly Government’s policy.

**(f) Post implementation review**

The responses highlight a need to review the method of valuation for businesses valued using this method. The Welsh Assembly Government will undertake a review involving the VOA, representatives of Local Government, and other interested parties after the 2010 revaluation has been completed, and the terms of reference will include considering whether

- there should be 2 decapitalisation rates,
- it is appropriate to refer to a decapitalisation rate for what is effectively a multiplier set by the Welsh Assembly Government, and our legal powers to use a multiplier in lieu of decapitalisation rate;
- the method to be used to set a decapitalisation rate for the 2015 revaluation;
- the classes of businesses that are valued by this method.