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SP Focus Fact Sheet – The Business Rate Supplements Bill

One of the 14 Bills included in the legislative programme for the 2008 to 2009 parliamentary session which will be of particular interest to local authorities is the Business Rate Supplements Bill (“the Bill”). In England, the Bill will permit county councils, unitary district councils, metropolitan councils and the Greater London Authority (“GLA”) to levy a supplement on the national non-domestic business rate. In Wales, county borough councils and county councils will be able to exercise the power. Local authorities which may exercise the power are referred to in the Bill as “levying authorities”.

The current position

Currently, non-domestic properties in the UK are subject to national non-domestic rates, also known as business rates. The hypothetical rental value of the property (the assessed rateable value) together with a multiplier (usually set out as a number of pence in the pound) is calculated to measure the occupiers’ liability.

Power to impose business rate supplements (“BRS”)

The Bill allows a levying authority to levy a BRS on national non-domestic ratepayers for the purpose of raising money for expenditure on projects intended to support the economic development of the authority’s area. The power may be exercised jointly by 2 or more levying authorities.

National non-domestic ratepayers

Under the Bill, a national non-domestic ratepayer is a person in the area of the levying authority who is liable to pay national non-domestic rates under section 43 (occupiers of properties) or section 45 (empty properties) of the Local Government Finance Act 1988 (“the 1988 Act”).

Use of money raised by BRS

The levying authority must secure that the sums it receives from the BRS are only used for expenditure on the project to which the BRS relates. The money received can be spent directly or in the form of loan repayments, but the sums cannot be used for expenditure which the authority would have incurred had it not imposed the BRS. In London, the GLA may make arrangements with a functional body (i.e Transport for London, the London Development Agency, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority) for the sums it receives to be used by the functional body for expenditure on the project to which the BRS relates.

Restrictions on how the money can be spent

The money cannot be spent on certain services which the authority already has an obligation to provide, namely: housing, social services, education services, services for children, health services and services that the authority provides in the discharge of functions imposed under the Planning Acts.

Procedure for imposing a BRS

A BRS cannot be imposed unless –

- The levying authority has published a prospectus, setting out the proposal for the imposition of the BRS
- It has consulted “relevant persons” on the proposal
- Where a ballot is to be held on the imposition of the BRS, the ballot has been held and the imposition of the BRS has been approved
- The levying authority has published a final prospectus that sets out the arrangements for the imposition of the BRS

The prospectus

Broadly, the prospectus must set out a description of the project to which the BRS relates, a description of the expenditure for which the sums received from the BRS will be used, an assessment of the likely impact of the BRS on businesses in the authority’s area and an assessment on the likely benefits of the project for the area.

The final prospectus will be produced after consultation, (and if one is held, a ballot) and it will contain the details of the BRS that will actually be imposed and the project it will fund. In London, the Mayor will approve the final prospectus; outside London, it will be the responsibility of the levying authority.

The consultation

The levying authority must consult the following about the proposal to introduce a BRS:

- Each person who will be liable to pay the BRS on its first day (the Bill sets out the situations in which a person will be liable);
- Each lower-tier authority in relation to the levying authority (in London this will mean the London boroughs and the City of London; elsewhere in England it will mean a district council whose area forms part of a county council’s area), and
- Other persons as the levying authority thinks appropriate, (the levying authority must think whether it would be appropriate to consult persons who might become liable to pay a chargeable amount before the end of the chargeable period of the BRS).

The Ballot

A ballot will be required if the amount a levying authority expects to raise from a BRS is more than one third of the total cost of the project it is being levied to fund. In all other circumstances, the levying authority may choose to hold a ballot. Those people the authority thinks will be liable to pay the BRS will be eligible to vote in the ballot.

For a BRS to be approved, (i) a majority of the persons voting in the ballot must have voted in favour of the imposition of the BRS and (ii) the aggregate of the rateable values of each hereditament in respect of which a person voted in favour of the imposition must be greater than the aggregate rateable values of each hereditament in respect of which a person voted against the imposition.

The Bill provides that regulations may be made in relation to holding a ballot on the imposition of a BRS.

Variations

The Bill allows the levying authority to vary a BRS provided the variation is in line with the final prospectus and provided that the variation will not increase the number of those liable to pay the BRS. If a variation is not set out in the final prospectus, a publication and consultation exercise, similar to that which would have been undertaken in respect of the BRS must be carried out.

Liability to BRS

A person subject to non-domestic rates in respect of a financial year will be subject to such BRS's as are imposed for that year by the levying authority.

A person liable to pay national non-domestic rates under section 45 of the 1988 Act as the owner of an empty property will be exempt from the BRS if their liability to rates is zero as a consequence of section 45A (empty properties: zero rating for charities and amateur sports clubs) or the final prospectus states that ratepayers under s. 45 are exempt from the BRS. In addition, the BRS will not apply if the property for which a person pays rates has a rateable value on the day in question which does not exceed the amount prescribed by regulations.

Calculation of BRS

A person is subject to a daily charge for a BRS. The liability for a financial year is determined by calculating the liability for each "chargeable day" and by adding the total daily liabilities. "Chargeable day" is defined as a day falling within the financial year and the "chargeable period", that is, the period for which the supplement is imposed and where the rateable value condition is met. The rateable value condition is met where the rateable value of a hereditament exceeds the amount prescribed by regulations.

The Bill sets out formulae for calculating the chargeable amount for a chargeable day, and these depend on whether the hereditament is entitled to certain existing (discretionary or mandatory) reliefs. An upper limit is placed on the multiplier for any single BRS imposed by an authority of 2p per pound of rateable value.

Reliefs

The levying authority which imposes a BRS may apply such reliefs in respect of the BRS as it thinks fit, however, a relief may not be applied unless the authority have, amongst other conditions, prepared rules for the application which were set out in the final prospectus.

Interaction with BID levy

BIDs or Business Improvement Districts were introduced by the Local Government Act 2003. A BID is an arrangement by which local businesses, which have obtained the consent of a majority of non-domestic rate payers, can enter into an agreement to establish a partnership between local businesses and the local authority, under which, non domestic rate-payers agree to pay a BID levy in excess of the non-domestic rates. The BID levy is then used by the local authority to finance projects and services that the members of the BID consider necessary for the benefit of the locality, or those who live and work there. Each BID is operational for a maximum of 5 years before a new vote is taken.

The Bill allows levying authorities to offset the payment of BID levies against BRS liability. When this is done, in order to calculate the BRS chargeable amount, a ratepayer's liability for the BID levy will be subtracted from their potential liability for the BRS.

Administration

Where the levying authority is a billing authority for the purposes of national non-domestic rates, the authority will be responsible for calculating the chargeable amount; however, where the levying authority is not a billing authority, the billing

authority for the area in which the relevant non-domestic property is situated will be responsible for the calculation.

To allow the billing authorities in its area to calculate the BRS, the levying authority will have to notify them in writing of, amongst other things, the BRS multiplier and whether any relief is to be applied.

Enforcement

The Secretary of State and, in Wales, the Welsh Ministers may make regulations in respect of the collection and enforcement of BRS.

Cancellation of BRS

The Secretary of State and, in Wales, the Welsh Ministers may cancel a BRS and order the revenue received to be refunded (or take other appropriate steps) if it considered that a levying authority has acted inconsistently with the final prospectus, the information sent out for consultation and, where relevant, the ballot.

Guidance

Levying authorities will be required to have regard to guidance issued by the Secretary of State, or in Wales, the Welsh Ministers, about a range of matters connected to the BRS.

Introductory provision

The Bill provides that no BRS may be levied before 1st April 2010.

Comment

The BRS is a further development of the government's strategy to encourage partnerships between the public and private sectors. Unlike BIDs, which require a ballot in every instance, the BRS will only be subject to a ballot when the amount expected to be raised is more than one third of the proposed project's total cost. Moreover, unlike BIDs, the mandate for the BRS will not have to be renewed every 5 years. Both factors will assist in making the BRS more suitable to large-scale, long-term investments. Indeed, the size of project to which a BRS may be applied is envisioned in *Business rate supplements: a White Paper* published in October 2007, which referred to the then London Mayor's intention to levy a BRS across the GLA area to be used to service debt raised for the construction of Crossrail, the largest addition to the transport network in London and the South East for 50 years.

With some local authorities already levying additional charges by means of congestion charging and community infrastructure levies, it is questionable whether business will respond favourably to the BRS. Moreover, the fact that ballots will not be mandatory in every instance will make it more difficult for businesses to plan for the future, something which, in the current economic climate should make the Bill's passage through parliament an interesting one.

This note is intended to provide a brief overview of the Business Rate Supplements Bill. It is not intended to be a comprehensive guide or to constitute legal advice.

