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Consultation Document

Technical Consultation on The Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 and Guidance for Ratepayers

Date of issue: 3 August 2015

Action required: Responses by 14 September 2015

Overview

This is a technical consultation on the draft The Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 ("the draft 2015 Order") and the accompanying guidance for ratepayers.

The draft 2015 Order makes amendments to section 66(2BB) of the Local Government Finance Act 1988 ("the 1988 Act") which is used to determine whether self-catering properties should be liable for council tax or non-domestic rates.

How to respond

Comments regarding the practical application of the draft 2015 Order and the supporting guidance can be sent to the following address:

Local Government Finance Policy Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
e-mail: lgf1Consultations2015@wales.gsi.gov.uk

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Local Government Finance Policy Division
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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Structure of the Consultation Document

This consultation document sets out:

- The background of the Non-Domestic Rating (Definition of Domestic Property) Order 2010
- The overarching structure of the draft 2015 Order;
- Accompanying guidance for ratepayers
- Next steps

Background

The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 (“the 2010 Order”) was originally introduced to amend section 66 of the 1988 Act, to close a tax loophole and prevent individuals avoiding council tax by claiming that their property (usually a second home) was being used for self-catering purposes.

The 2010 Order was introduced to strengthen the criteria used by the Valuation Office Agency (VOA) to determine whether a self-catering property should be classed as a non-domestic property. The 2010 Order stipulates that, as well as being commercially available for let as self-catering accommodation for short periods totalling 140 days or more in any year, the short periods for which it was actually let must amount to a total of at least 70 days (colloquially referred to as the 70-day rule). If either the 140 or 70-day criteria are not met in any year, the property, even if it operates as a genuine self-catering business, would be classed as domestic and would be liable for council tax. Prior to the 2010 Order being implemented, owners of self-catering properties only had to provide evidence that the property was commercially available for let for 140 days in a year to be assessed as a non-domestic property.

Following the commissioned review of the 2010 Order by the Institute of Revenue, Ratings and Valuation and the subsequent consultation that was undertaken, potential amendments to section 66(2BB) of the 1988 Act have been considered with a view to maintaining the original intention of the criteria inserted by the 2010 Order of closing the tax loophole, whilst also addressing issues that business and other key stakeholders have raised. Detailed work has been undertaken and advice sought from the Valuation Office Agency and Her Majesty's Revenue and Customs.

Structure of the Legislation

The original criteria in section 66(2BB) (as inserted by the 2010 Order and set out below) will be retained, meaning that self-catering accommodation will be assessed for non-domestic rates if:

- it will be available for letting commercially as self-catering accommodation for short periods totalling 140 days or more in the following 12 month period;

- in the 12 months prior to assessment it has been available for letting commercially as self-catering accommodation for short periods totalling 140 days or more; **and**
- the short periods for which it was so let amounted in total to at least 70 days.

New provisions will also be introduced to provide additional flexibility to assist owners of certain self-catering properties in meeting the criteria, for example a farm with a number of outbuildings. These provisions will allow self-catering business owners who have several self-catering properties at the same location or within very close proximity to have the option to average the number of lettings days of their properties to meet the 70-day criterion for the business as a whole. This is explained in detail in Annex 1 of the guidance.

Guidance for ratepayers

In response to concerns about the introduction of the 2010 Order and the lack of accompanying advice available, guidance for ratepayers has been prepared to support the introduction of the draft 2015 Order. This guidance provides advice on:

- how the non-domestic rates system operates;
- how rateable values & rates bills are calculated;
- the criteria that needs to be met to be classed as a non-domestic property;
- how self catering properties are assessed for non-domestic rates;
- what information self catering property owners need to provide to the Valuation Office Agency; and
- what assistance is available to ratepayers.

Next Steps

The consultation on the draft 2015 Order and associated guidance will be open for a six-week period. Following the close of the technical consultation, responses will be considered and any further amendments which are required will be drafted.

Subject to the views submitted during the technical consultation exercise it is intended that the draft 2015 Order will be made in the autumn and will come into effect from 1 April 2016. This will give owners of self-catering properties and the VOA and Billing Authorities sufficient time to prepare.

Views being sought

We are seeking views on the draft Order and its practical application:

- Do you agree that provisions should be made to average the 70 day criteria for properties at the same location or within very close proximity of each other owned by the same business?
- Are there any issues regarding the administration and enforcement of such a provision?
- Do you have any other comments in relation to the draft Order?

With regards to the Guidance for Ratepayers-

- Does the guidance provide sufficient advice to self-catering property owners in relation to the draft Order?
- Should the guidance cover any other areas?