



Llywodraeth Cymru
Welsh Government

PUBLICATION

Consultation on setting decapitalisation rates for Wales for the Non-Domestic Rates Revaluation 2023

We are seeking views on the decapitalisation rates to be adopted for the 2023 non-domestic rates revaluation in Wales.

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Introduction

A revaluation of non-domestic properties usually takes place every five years with the next revaluation due to take place in 2022. The Welsh Government issued a **written statement in August 2020** to move the next revaluation to 2023 to factor in the economic impact of the Coronavirus pandemic.

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The main purpose of revaluation, and the associated setting of the multiplier, is to adjust the liability of properties relative to others within the non-domestic rates (NDR) tax-base. This ensures the rates liability is spread fairly between ratepayers and is based on up-to-date rental values. At each revaluation, all properties are assigned a new rateable value. The multiplier is then reset by the Welsh Government to ensure the NDR tax-base can broadly generate the same level of funding after revaluation as before.

Preparations are underway for new rating lists to be introduced in Wales from 1 April 2023. The Valuation Office Agency (VOA) is responsible for compiling and publishing the new rating lists and will ensure all non-domestic properties are assigned a new rateable value based upon its estimated annual rental value as at the Antecedent Valuation Date (AVD) of 1 April 2021. The VOA is independent of the Welsh Government.

The VOA uses three methods for calculating the rateable value of a non-domestic property, depending on the available evidence. This consultation concerns a feature of one of these methods, the Contractor's Basis. Most properties are assessed using rental information. The Contractor's Basis is used for specialised properties where there is little or no direct evidence of actual rents available. Approximately 6,000 non-domestic properties in Wales are valued using the Contractor's Basis. These properties include utilities, schools, hospitals, heavy industry, fire and police stations, and airports, amongst others.

The decapitalisation rate is a key part of the Contractor's Basis. It is a percentage figure which is used to convert capital value of a property into an annual rental value. It ensures the costs and benefits of owning a property, compared to renting a property, are taken into account when calculating the rateable value of a property.

This consultation seeks views on whether the decapitalisation rate should be prescribed in [legislation](#), how many rates should be prescribed and how the rate or rates should be calculated.

This consultation applies to Wales only.

What is the decapitalisation rate?

The valuation process and the contractor's basis

The VOA uses three methods for calculating the rateable value of a property depending on the available evidence. Rental Comparison is used whenever there are sufficient numbers of comparable properties to provide reliable evidence on rental values.

The Receipts and Expenditure method is used when there is insufficient information to compare rental values and when rent is likely to be based on the profits made from the business occupying the property, for example pubs and hotels.

The Contractor's Basis is used when no such evidence exists. It is generally used for specialised properties, for example large industrial buildings, schools and hospitals. Properties such as these are rarely let and therefore their rental values are determined by reference to construction costs.

Rateable value on the contractor's basis

It is estimated that around 6,000 non-domestic properties in Wales will be valued using the Contractor's Basis. As of February 2021, based on a 1 April 2017 valuation date, these properties have a total rateable value of approximately £360m as follows.

| Sector | Rateable value (£m) |
|-----------|---------------------|
| Education | 138 |
| Health | 53 |
| Industry | 53 |

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| Sector | Rateable value (£m) |
|-------------------------|---------------------|
| Ministry of Defence | 8 |
| Utilities and transport | 29 |
| Other non-public sector | 9 |
| Other non public sector | 70 |
| Total | 360 |

The Contractor's Basis

The Contractor's Basis has evolved through rating case law over some 200 years. It is based on the premise that the hypothetical tenant has an alternative to renting and they could purchase land and build a similar hereditament.

Rating case law has established six principal stages of a Contractor's Basis of valuation, as follows:

Stage 1

Estimate the cost of replacing the building and any rateable items such as certain types of plant and machinery.

Stage 2

Make deductions to reflect the actual property being valued to adjust for age and obsolescence.

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Stage 3

Add the land value to arrive at the total capital sum.

Stage 4

Decapitalise the total capital sum at the appropriate decapitalisation rate (or interest on capital rate). This converts capital value into an annual equivalent, or rental value.

Stage 5

Stand back and look at the resultant answer to reflect any matters which would affect the rental value, as opposed to the capital cost.

Stage 6

Consider the differences between the landlord's and tenant's viewpoints (in practice this stage is often combined with stage 5).

Stage 4 of the Contractor's Basis above is the decapitalisation rate. It is a percentage figure which is used to convert capital value into an annual rental value. It ensures the costs and benefits of owning a property, compared to renting a property, are taken into account when calculating the rateable value of a property. The higher the decapitalisation rate, the higher the resultant rateable value will be.

The prescription of the decapitalisation rate in legislation

Why is the decapitalisation rate prescribed in legislation?

Before 1990, the Courts had great difficulty in deciding how the decapitalisation

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rate should be derived and at what level it should be set when determining the rateable value of a property. This gave rise to a series of appeals which created uncertainty as to the rates liability for these properties and, ultimately, the level of non-domestic rates (NDR) income.

For the previous six revaluations, 1990, 1995, 2000, 2005, 2010 and 2017, the decapitalisation rates have been prescribed in legislation by Ministers via amendments to the Non-Domestic Rating (Miscellaneous Provisions) (No.2) Regulations 1989.

The primary purpose of setting the decapitalisation rate in legislation is to standardise the way that Valuation Officers convert capital value into rateable value when using the Contractor's Basis. It therefore eliminates any uncertainty regarding the rate which should be used.

If the decapitalisation rate is prescribed in legislation, it has a fixed value and therefore has a demonstrable effect on the rateable value of those properties valued by the Contractor's Basis, the higher the decapitalisation rate, the higher the rateable value of these properties. In turn, therefore, the decapitalisation rates will also have an indirect effect on how the rates liability is distributed by exerting pressure on the multiplier. If the decapitalisation rate increases, it exerts a downward pressure (albeit minor) on the multiplier, and vice versa.

Prescribing the decapitalisation rate in legislation ensures that ratepayers are able to predict their NDR liability following a revaluation, with a reasonable degree of certainty. This helps to avoid large numbers of legal challenges of valuation decisions, which can be costly. It also reduces the risk for the Welsh Government and local services which require NDR income to remain relatively stable in order to set their budgets and plan effectively for future years.

It has previously been suggested that decapitalisation rates should not be prescribed in legislation and that, in the long term, uncertainty as to the rate is best dealt with by allowing the Courts to consider the right rates for different classes of property. In turn, this should allow valuations to fit the circumstances of each case. However, it is far from clear that the Courts could deliver long-term stability through the consideration of individual cases.

In fact, such an approach may give rise to more uncertainty largely because finance is secured from a variety of sources ranging from private equity, public equity, commercial borrowing and the Public Works Loans Board. As a result, the VOA would have to assess the mix and nature of such finance to value individual properties. This means that ending prescription of the rate could give rise to extensive litigation.

It is likely ending the prescription of the decapitalisation rate would lead to an unacceptable level of uncertainty for those valued on the Contractor's Basis. It is therefore proposed that the Welsh Government continues to prescribe the decapitalisation rate used in the Contractor's Basis of valuation.

How many rates should be prescribed?

Should a lower and a standard rate continued to be prescribed?

Since 1990, two decapitalisation rates have been prescribed in legislation, a standard and a lower rate. At the 2017 revaluation, a lower rate was applied for educational, healthcare, defence and public convenience hereditaments, while the standard rate applied to all other properties.

The lower rate was applied to certain public sector properties to reflect the fact that the occupiers of these properties have access to cheaper forms of financing such as public loans or grants and, in some cases, donations. As a result, the decapitalisation rate (which in part reflects the cost of financing) should be lower compared with hereditaments on the higher rate.

In the past, there have been calls for a single decapitalisation rate for all properties. This would simplify matters but would also mean the special characteristics of public sector bodies (such as schools and hospitals) on the lower rate would no longer be taken into account when calculating the rateable value of these properties.

Conversely, it has also been argued that more than two decapitalisation rates

should be prescribed in legislation. More rates would enable the system to reflect the circumstances and characteristics of different types of properties but adding new rates would also increase complexity of the system and could result in litigation around the boundaries of the rates.

It is proposed that a standard and a lower decapitalisation rate continue to be prescribed in legislation and that the existing groupings will remain unchanged. Moving to a single rate, moving to multiple rates or altering groupings would lead to ratepayers facing significant changes in their rates bill for reasons unconnected to revaluation. A change in approach would also disturb a system which has worked well and is widely understood.

How to calculate the decapitalisation rates

The appropriate rates for the 2023 revaluation

The Welsh Government last set the decapitalisation rates for Wales for the 2017 revaluation having regard to circumstances at 1 April 2015. A lower rate of 2.1% and a standard rate of 3.8% were set. For the 2023 revaluation, the Welsh Government will consider the circumstances at 1 April 2021 (the Antecedent Valuation Date for the 2023 revaluation).

Determining the decapitalisation rate is a complex matter. There are a number of different methodologies which each has its advantages and disadvantages, as well as a number of other factors such as changes in the value of land or in building costs. In setting the rates, the Welsh Government will have regard to all the methods and factors which it considers relevant.

Factors which need to be taken into consideration

Central to the Contractor's Basis of valuation is the assumption that cost equates to value but this is not always the case. The costs and benefits of owning a property will depend on a range of factors, such as building costs and the ongoing cost of financing, as well as the economic situation and the

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availability of similar properties. For example, there may be instances in some sectors where construction costs have increased but returns have fallen.

Methodology

There are a number of academic methods available for calculating the decapitalisation rates to be prescribed in legislation. Each method produces a wide range of possible percentage rates, largely because they rely on an array of economic variables.

Annex A provides a description of these methods, an outline of their strengths and weaknesses, and the range of values they produce to inform the decapitalisation rate.

Relative movement in rents between the valuation dates

The academic methods detailed in Annex A provide a broad range of possible values and do not therefore offer a definitive answer as to what the decapitalisation rate should be.

As the primary function of the decapitalisation rate is to convert capital values into rental values, the relative movements in rents between the valuation dates for the 2017 Revaluation and the 2023 Revaluation in Wales should also be taken into consideration. This acts as a check upon the results of the academic methods.

In principle, the movement between the valuation dates for properties assessed on the Contractor's Basis should not, overall, be significantly out of line with the general movement in rental values. If movements in rateable values on the Contractor's Basis were significantly out of line with movements for other properties, this might indicate that the results of the method had departed, to some extent, from the value of the properties.

This check was used when setting the decapitalisation rates for England, Scotland and Wales in respect of the 2017 Revaluation, and also for Northern

Ireland in respect of its revaluation in 2020. While England and Scotland aligned their decapitalisation rates, the Northern Ireland Executive and the Welsh Government prescribed their own decapitalisation rates with reference to the rental movements within their own tax-bases.

Longer term considerations

Given the strength of the considerations regarding the prescription of decapitalisation rates and the level of support for this at previous revaluations, the Welsh Government would like views on a general policy of prescribing decapitalisation rates at future revaluations.

Under a general policy the Welsh Government would at each revaluation:

- gather evidence at the valuation date of the relevant considerations at Annex A
- consider whether the current decapitalisation rates remained within the range of possible outcomes and should continue to be prescribed
- either confirm under the general policy that the existing rates will remain unchanged (if they are within in the range) or undertake a consultation on the new rates (if they are outside of the range).

However, there is and is likely to remain a great deal of uncertainty over the factors relevant to the level of the decapitalisation rates and a wide range of property types within each rate. As a result, there will continue to be no single answer to what the correct decapitalisation rates should be at any one revaluation. Generally, the range of possible rates is very wide covering the existing decapitalisation rates and much more.

These circumstances add uncertainty to the process and potentially delay the revaluation exercise. A general policy would give more certainty to ratepayers and the VOA in preparing the revaluation and provide a clearer basis for future decapitalisation rates. However, any changes not accounted for would result in the revaluation multiplier less accurately representing market conditions. The risk presented by this is compounded by a larger proportion of rateable value in the tax base in Wales compared to the rest of the UK being prescribed under the

Contractor's Basis.

This would not mean future governments would be bound to this general policy. It would still be open for the government to depart from this general policy and consult on new rates in the future even if the existing rates are within the range of possible outcomes.

Next Steps

Once the consultation has closed, all responses will be analysed and used to inform the setting of the decapitalisation rates and regulations to prescribe the decapitalisation rates.

Annex A: Methodological Approaches for Calculating Decapitalisation Rates Introduction

The Welsh Government set the decapitalisation rates for Wales for the 2017 revaluation having regard to circumstances as at 1 April 2015. For the 2023 revaluation, the Welsh Government will consider the circumstances at 1 April 2021, the Antecedent Valuation Date (AVD) for the 2023 revaluation.

Broad principles in determining the decapitalisation rate

The 'Contractor's Basis' is one of three recognised methods for valuing hereditaments for rating purposes. It is used for specialised properties when there is no information available on the general rental market. It is based on the premise that the hypothetical tenant has an alternative to renting and they could purchase land and build a similar hereditament. Therefore, they will not pay more in rent than the annualised cost of buying some land and building a similar property nearby.

Using this method, after the capital value has been derived (taking into account construction costs, the age of the property and the land value), the decapitalisation rate is applied. The function of the decapitalisation rate is to

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convert capital value into an annual rental value. Therefore, the decapitalisation has a direct bearing on the final valuation of a property.

Prior to the prescription of decapitalisation rates in 1990, a number of methods were adopted and tested through the courts.

In England and Wales, the courts tended to examine the cost of securing the capital to build an alternative property and then adjusted this figure to take into account the benefits of owning a property as opposed to renting a property, this adjustment has become known as the 'Denning Discount'.

In Scotland, the courts tended to look more towards yield and rent-to-cost relationships on property investment as an appropriate basis for setting a decapitalisation rate. This was based on the principle that yield (the amount in rent in relation to the capital value or cost of the property) provides more direct evidence of the rental value of a property, set against its capital value or cost, than other valuation methods.

These approaches have been considered when setting the decapitalisation rates since 1990 and they are examined below for the 2023 revaluation having regard to the economic circumstances at the AVD for the revaluation, 1 April 2021.

In the rating world, the hypothetical tenant would have to pay a nominal rate of interest; assuming that the capital sum they repaid remained the same. (See *Imperial College of Science and Technology v Edbon (VO)* and *Westminster City Council 1986 RA 233*). Therefore, the starting point for the decapitalisation rates is a nominal rate of interest (unless otherwise stated). To the extent that the effects of inflation should be adjusted or ignored in reaching a decapitalisation rate, this is reflected in the Denning Discount.

Discount to reflect the benefits of ownership (The Denning Discount)

A discount may be applied to the nominal rate of interest to take account of the difference between owing and renting a property (See *Dawkins (VO) v Royal Lemington Spa Corporation (1961) 8 RRC 241* and *Cardiff City Council v*

Williams (VO) [1973] RA 46). This can reflect a number of factors which influence the costs and benefits for the owner of the property, for example the tenant:

- does not benefit from capital growth (or loss) on the asset which is capable of being realised at any time
- does not have title to the land (a non-wasting asset)
- is not able to sell the asset at the time of their choosing
- is largely unaffected by the costs of obsolescence of the property (for example technological change may lead to a fall in capital value)
- does not incur the cost of rent collection or run the risk of void periods or the tenant defaulting on their rent
- does not have full freedom to adapt the property to changing circumstances.

While some of these factors are capable of being analysed, the effects are to some extent subjective and may vary by type of property, by type of hypothetical tenant and by the method adopted. More recently, the returns from owning property have become less certain and the risk of losses has risen in some sectors. This has increased the uncertainty over the Denning Discount and could also reduce the discount compared to previous revaluations.

After allowing for a range of outcomes on the various indicators used, it has been calculated that the Denning Discount could vary from a 4% discount to a 2% increase. This range has been adopted for the methods set out below.

Methods for determining decapitalisation rates

There are three generally accepted methods for determining the decapitalisation rate. These are:

- the cost of securing capital from borrowing to build the alternative property
- the cost of securing capital from debt and equity to build the alternative property
- property investment yields.

Each method for calculating the decapitalisation rates is outlined below, along

with its strengths and weaknesses. Each method uses an array of indicators, and therefore a range of possible values has been suggested, within which a final figure could be used for the decapitalisation rates.

The cost of securing capital from borrowing to build the alternative property

This method is based on predicting the Bank of England base interest rate for the medium-long term with adjustments made for inflation and a borrower's premium.

Strengths of this method include:

- it reflects the fact that in the public and private sector, debt is used to fund property (although not always exclusively)
- the economic variables which underpin the result are relevant to the economic climate at the time, giving the approach simplicity and transparency
- its development evolved from case law prior to statutory prescription of the decapitalisation rate.

Weaknesses of this method include:

- it includes a number of variables which require assumptions to be made and which are sensitive to small changes in economic circumstances. This may make the method less reliable in times of economic change
- the method assumes that capital is funded only from borrowing when in fact there may be a number of other sources available.

The cost of securing capital from debt and equity to build the alternative property

This approach develops the traditional route by taking a more sophisticated look at the cost of capital and recognises that capital may be raised not just from debt, but a combination of debt and equity.

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The common method of determining the cost of finance from debt and equity is the Weighted Cost of Capital (WACC). This combines the cost of debt with the cost of equity to arrive at a weighted average between the two. Such an approach is commonly adopted by regulators assessing returns allowed on capital for regulated industries such as utilities.

Strengths of this method include:

- it recognises that capital may be funded by equity as well as debt, thereby offering a more sophisticated approach
- it reflects how property is funded in large industry.

Weaknesses of this method include:

- it does not apply to public sector bodies as they seldom fund capital through equity
- slight changes to any of the inputs can produce significant variations in the final answer, calling into question its accuracy
- the cost of equity and the balance between debt and equity can vary significantly between sectors and over time resulting in a wider range of possible rates.

Property investment yields

This approach is predicated on the basis that yields from property investment provide a measure of the relationship between capital and rental value.

Industrial property yields are considered to be a useful indicator for this purpose, as these are the only class of property which is valued on the Contractor's Basis and for which evidence of yields is available. They can also be a useful indicator as they are likely to be fairly stable in periods of economic change, unlike other sectors such as the retail sector which tends to fluctuate according to market conditions.

Strengths of this method include:

- it is simple and transparent, drawing on actual market evidence, which

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makes it less subjective than other methods

- it focuses on the relationship between capital and rental values which is what a decapitalisation rate ultimately tries to achieve.

Weaknesses of this method include:

- prior to prescription in 1990, the use of investment yields as a means of determining the decapitalisation rate was generally rejected by the courts in England and Wales (it stems from Scottish case law)
- it is questionable whether the industrial evidence base has relevance to the majority of Contractor's Basis hereditaments such as schools, hospitals and defence properties
- decapitalisation rates are meant to represent the cost of obtaining capital, property investment yields do not do this.

However the fall in the overall cost of borrowing in recent years has created a large separation between the results of this method and the traditional route, highlighting its limitations.

Consultation Questions

Question 1

Do you agree Welsh Government should continue to prescribe the decapitalisation rates used in the Contractor's Basis of Valuation?

Question 2

Do you agree that the Welsh Government should continue to prescribe two decapitalisation rates in Wales?

Question 3

Do you have any views on the methods for setting the decapitalisation rates

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(including any suggestions for alternative methods), on the range of values generated by each method, or on the merits or otherwise of each method?

Question 4

Do you agree with the Welsh Government's proposed approach for setting decapitalisation rates in Wales?

Question 5

What are your views on adopting a general policy for setting decapitalisation rates in Wales for future revaluations?

Question 6

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 7

Please also explain how you believe the proposed policy approach could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 8

We have asked a number of specific questions. If you have any related points which we have not specifically addressed, please use this space to record them.

How to respond

Submit your comments by **16 June 2021**, in any of the following ways:

- complete our [online form](#)
- download, complete our [response form](#) and email LGF1Consultations@gov.wales
- download, complete our [response form](#) and post to:

Non-Domestic Rates Policy Branch
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

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Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: ico.org.uk

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

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You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Further information and related documents

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