Valuation Background Paper

*Wealth Tax Commission*

# Valuation of commercial and residential real estate assets

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# VALUATION OF COMMERCIAL AND RESIDENTIAL REAL ESTATE ASSETS

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# Summary

The valuation of commercial and residential real estate for taxation purposes has evolved over time and created a number of complex issues. This process has been in a piecemeal way, on a tax by tax basis, and has resulted in the current use of a wide variety of valuation approaches for different taxes.

For non-taxation purposes real estate in the UK is generally valued under the rules set out in the Royal Institute of Chartered Surveyors (RICS) Valuation Standards (the 'Red Book'). Valuation for taxation purposes requires consideration of a combination of statute, case law and valuation standards which has created significant uncertainties as taxes have been introduced, amended and withdrawn over the years.

Nearly all properties within the UK currently have a valuation for taxation purposes. However, because these valuations are for a number of different taxes, there is an overall lack of consistency, in particular between residential and commercial property.

The practical issues in agreeing valuations, including the provision of rights of challenge and appeal, mean that the frequency of valuations is a challenging issue and there are no examples of taxes which have maintained a consistent pattern of revaluation over time.

# 1. Introduction

The purpose of this paper is to outline the key valuation concepts and issues relating to commercial and residential real estate in the context of the introduction of a wealth tax.

The paper will consider the definition of real estate and how this impacts upon taxation valuations, before setting out the bases of value and valuation approaches commonly used. It will then look at the different valuation approaches currently used for a range of taxation scenarios.

Valuation principles and guidance are set out in the Royal Institution of Chartered Surveyors published standards. These are organised as global standards (incorporating International Valuation Standards) and a UK National Supplement (the ‘Red Book’) and are referred to throughout this paper.

It should be noted that this paper primarily considers valuation of property in England, Wales and Northern Ireland, whilst many of the concepts will also apply to property in Scotland, it should be noted that for some of the taxes considered, Scotland operates a separate tax system.

# 2. How to define commercial and residential real estate?

This paper will cover the valuation aspects for taxation purposes of UK commercial and residential real estate. It does not cover the valuation of rural or undeveloped land, although it is recognised that there are a number of areas, both of valuation and taxation, where the principles set out will also apply.

There are no definitions of particular property types set out in RICS Valuation Guidance. Other than a differentiation between investment property and occupied property, the classification of property types for accounting purposes is a relatively straightforward matter as set out in the relevant accounting standards.

However, for tax purposes it has frequently been the case that a property is defined by the current use to which it is subject. Defining a property by its use is, in many cases, a fundamental and material issue.

The evolution of UK tax legislation has created a number of issues of definition which have ultimately been decided by the courts interpreting the statute, not just around the definition of residential property, but also around other types of commercial property ranging from questions such as is a student accommodation block to be considered residential for tax purposes[1] through to the consideration of individual cashpoint machines for business rates purposes[2] and covering myriad different issues in between. In addition, taxation rules have evolved over time to create differing treatments for the interest in land which is held, be it freehold, leasehold or another form of tenancy. For valuation purposes, there is a general assumption that the interest being valued is the one which carries the economic benefits of ownership, but in particular with regard to commercial property this can become a complex issue for defining the valuation requirements which will determine the valuation of an interest in land for tax purposes. Consequently, one of the key additional considerations for a valuer providing a valuation for tax purposes is to address the interest in land held and whether this affects the tax valuation.

Experience has shown that there will always be a need for clear definition of property which is to be valued for the purposes of a net wealth tax. Definitions of property type (i.e. residential, industrial, hotel etc.) have a history of becoming complex and subjective where there arises differential tax treatment depending upon the building use. A warning around the consequences of this can be found in the substantial body of case law which evolved around the interpretation of Industrial Buildings for the purposes of the now withdrawn Industrial Buildings Allowances[3] which were granted to certain types of commercial property up to 2012. The detailed discussion through the courts as to whether goods were being 'subjected to a process' within a building[4] or

[1] See *HM Revenue & Customs Brief* 45 (2010), 22 October 2010, providing guidance on the meaning of 'dwelling-house' for the purposes of Section 35 of the Capital Allowances Act (CAA) 2001; and *HMRC Capital Allowances Manual*, at Capital Allowances: Meaning of Dwelling House [http://www.hmrc.gov.uk/briefs/income-tax/dwelling-house-guidance.pdf].
[2] See Supreme Court case *Cardtronics UK Ltd and others v Sykes and others [2020] UKSC 21*.
[3] Capital Allowances Act 2001, Part 3.
[4] There have been a number of cases in this area over the years, *Buckingham v Securitas Properties Ltd.* 53TC292; *Vibroplant Ltd. v Holland* 54TC658 and *Girobank plc v Clarke* 70TC387 are examples of cases which have addressed this point.

whether a building was ‘ancillary to retail’[5] created interesting areas for the courts to consider, however the overall effect was one of taxation uncertainty. That said, if the net wealth tax were to apply to all property then many of these interpretation issues may disappear.

Leaving property use definitions aside, it is important to understand how commercial and residential property is currently valued for UK taxation purposes.

[5] Again, there is substantial case law in this area, including *Sarsfield v Dixon’s Group plc* 71TC121 and *Kilmarnock Equitable Co-operative Society Ltd. v CIR* 42TC675 which addresses both the subjection of goods to a process and the ancillary to retail points.

# 3. Bases of value

As noted above, the starting point for valuation regulation and guidance is the Red Book. Valuation Practice Standards (VPS) 4 is a mandatory standard which applies International Valuation Standard (IVS) 104. It is under this practice standard that a valuer is required to ensure that the basis of value adopted is appropriate for the purpose of the valuation. The VPS sets out, among others, the following four bases of value:[6]

(1) *Market value* – the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;

(2) *Market rent* – the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;

(3) *Investment value* (or worth) – the value of an asset to a particular owner or prospective owner for individual investment or operational objectives; and

(4) *Equitable value* (previously IVS defined Fair Value) – the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

VPS 4 goes on to state that *'It is important to note that bases of value are not necessarily mutually exclusive. For example, the worth of a property or asset to a specific party, or the equitable value of a property or asset in exchange between two specific parties, may match the market value even though different assessment criteria are used'.*

In arriving at a valuation, the standards are clear in setting out that there are no universal assumptions which are to be applied to the preparation of valuations for the above bases. Indeed, it is clear that bases other than market value may produce a value that could not be obtained on an actual sale, whether or not in the general market. Consequently, the valuer is required to clearly distinguish the assumptions or special assumptions that are different from, or additional to, those that would be appropriate in an estimate of market value.

An assumption is defined in the RICS glossary[7] as: *'A supposition taken to be true. It involves fact, conditions or situations affecting the subject of, or approach to, a valuation that, by agreement, do not need to be verified by the valuer as part of the valuation process'.* A special assumption is made by the valuer where an assumption either assumes facts that differ from those existing at the valuation date or that would not be made by a typical market participant in a transaction on that valuation date, however, the standard goes on to state that *'special assumptions may only be made if they can reasonably be regarded as realistic, relevant and valid for the particular circumstances of the valuation'.*[8]

[6] *RICS Valuation – Global Standards* (2019), Part 4: Valuation Technical and Performance Standards, VPS 4, para 2.2.
[7] *RICS Valuation – Global Standards* (2019), Part 2: Glossary, section 1.
[8] *RICS Valuation – Global Standards* (2019), Part 4: Valuation Technical and Performance Standards, VPS 4, para 9.

As detailed below, it is apparent that the courts have frequently applied special assumptions in order to facilitate the bridging of gaps between Valuation Standards and the interpretation of taxation statute.

# 4. Valuation approaches

Having established the appropriate basis of value, valuers will then consider the appropriate valuation approach. This term is generally used to mean '*the overall manner in which the valuation task is undertaken*'.[9] There are three main categories of valuation approach generally available to a valuer:

(1) The market approach is based on comparing the subject asset with identical or similar assets for which price information is available, such as a comparison with market transactions in the same, or closely similar, type of asset within an appropriate time horizon;

(2) The income approach is based on capitalisation or conversion of present and predicted income (cash flows), which may take a number of different forms, to produce a single current capital value. Among the forms taken, capitalisation of a conventional market-based income or discounting of a specific income projection can both be considered appropriate depending on the type of asset and whether such an approach would be adopted by market participants;

(3) The cost approach is based on the economic principle that a purchaser will pay no more for an asset than the cost to obtain one of equal utility whether by purchase or construction.

From a property valuation basis, there is clearly a divergence of approach for differing types of property. For example, for a commercial property investment, such as an office which is let to a tenant on a twenty-year lease with five yearly rent reviews, an income approach would be used to capitalise the rent received in order to arrive at an investment value for the property. Whilst this calculation will also be subject to a number of objective adjustments (such as lease incentives offered, strength of tenant covenant etc.), the need for subjective judgements to be exercised by the valuer is more limited to the application of a suitable market yield (usually derived from a substantial body of market evidence).

However, if the approach to the valuation of a residential house for owner occupation is compared to the office investment example above, it is clear that an entirely different valuation approach will be required. In this case it is likely to be a market approach which will be adopted, and whilst a certain number of factors are objective (such as size of house, number of bedrooms, size of plot etc.) there will be a greater emphasis on the application of subjective judgements by the valuer, particularly in the application of comparable sales where location, provision of local facilities, privacy, noise etc. can all play a part.

Whilst these are two very different approaches, there is of course a considerable area of difficulty in establishing the correct approach to valuation for numerous property types which fall in between these two, such as a residential property for rental or a mixed-use property such as one used for internet-based temporary accommodation rentals, where the valuation would be derived from a combination of residential and business uses.

It should be noted that as a general rule, the valuation approaches require any approach which reflects the property as it is at the date of valuation. There is the concept of highest and best use of an asset which is the use of an asset that maximises its productivity and that is possible, legally permissible and financially feasible[10] however for reporting and financing purposes this approach is rarely adopted in the UK unless noted as a Special Assumption. As we shall see, this

[9] *RICS Valuation – Global Standards* (2019), Part 4: Valuation Technical and Performance Standards, VPS 5, introduction.
[10] International Valuation Standards, 104, section 140.

concept has however been considered in further detail in certain circumstances when carrying out valuations for tax purposes.

# 5. Property valuation approaches for taxation purposes

## Introduction

Before considering the appropriate approach to property valuation for taxation, it is necessary to establish the scenarios under which taxation is currently applied to property in the UK.

These can broadly be split into four categories:

(1) Taxation of transactions – which will require calculations for Stamp Duty Land Tax (SDLT), Value Added Tax (VAT), Inheritance Tax, Capital Gains Tax and Income or Corporation Tax;

(2) Taxation of income – where tax liabilities will generally fall under Income or Corporation Tax;

(3) Taxation of occupation – primarily relates to business rates for commercial property and Council Tax and also the little known pre-owned assets income tax that imposes income tax on those who continue to occupy or enjoy land they gave away while (broadly) avoiding a reservation of benefit;

(4) Taxation on ownership - Annual Tax on Enveloped Dwellings (ATED) liabilities for certain types of residential property owned by companies (broadly where it is occupied by a connected person).

It is not within the scope of this paper to provide a commentary on the detailed tax treatment of the various taxes identified above, however, having established the taxes which may apply in each case, it is necessary to consider how the valuations required for tax compliance purposes are carried out.

## Valuations for Capital Gains Tax, Inheritance Tax, Stamp Duty Land Tax and Annual Tax on Enveloped Dwellings

Valuations of property for the taxes set out above are specifically covered in the Red Book under UK Valuation Practice Guidance Application (UK VPGA) 15 (also referred to as the 'Standard').[11] The existence of the Standard is an important point in itself, in that it recognises that there are a number of tax specific valuation issues which arise and require guidance differentiated to the guidance provided for say, valuations for financial reporting[12] or valuation of property for residential mortgage purposes[13]. It is recognised that valuations for different purposes may require different considerations and approaches and will therefore result in different valuations.

The main reason for the separate provisions of UK VPGA 15 is summarised at UK VPGA 15.1 – Application of Statute: '*The valuations used by taxpayers in their tax computations are subject*

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[11] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 15.
[12] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 1 : Valuation for Financial Reporting.
[13] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 11 : Valuation for Residential Mortgage Purposes.

*to examination by valuers in the Valuation Office Agency (VOA) on behalf of HMRC. It is therefore essential that any valuation used in those tax calculations has been prepared on the statutory basis having due regard to case law and in accordance with best practice.'*[14]

The Standard, which applies to both commercial and residential property, goes on to note that there are unique risks for incorrect valuations in terms of interest and penalties being charged under tax statutes and draws valuers' attention to the potential differences which may arise.

The particular valuations required for these tax purposes may be differentiated both by reference to definitions – for example UK VPGA 15.1 paragraph 3 identifies that *'the statutory definition of market value for tax purposes is not exactly the same as the definition of market value in Valuation Practice Statement 4*[15]*. In particular the existence of a special purchaser, where relevant, is a factor that is to be reflected properly',* and by reference to case law precedent. It is the application of a substantial body of case law precedent, something which does not apply to valuations reporting or financing purposes which creates many of the differences and complexities of valuation.

The guidance sates that the basis of value to be followed (generally a derivation or *market value*) is that as set out in each of the various statutes. However, it is also acknowledged that no particular method or methods of valuation are prescribed either by statute or by case law.[16]

The standard clarifies that the definition of market value to be used for tax purposes may be divided into elements which have been determined by case law. Examples of these include, but are not limited to:

(1) *'The price…' as defined in the case of Duke of Buccleuch v IRC [1967]1AC506 and Ellesmere v IRC [1918]2KB735;*

(2) *'…the property.'* defined in the case listed above, *but IRC v Gray (Executor f Lady Fox decd.)[1994]STC360* held that the property must be valued as it actually existed even if a vendor would have been likely to makes some changes prior to putting it on the market;

(3) *'..if sold…'* it was held in the case *of IRC v Crossman[1937]AC26* that for tax purposes we are concerned with a hypothetical sale and not an actual one;

(4) '…in the open market...' in Lynall v IRC[1972]AC680 where the open market was regarded as a blend of reality and hypothesis. In this regard the RICS commentary states that 'It was held that the conditions under which the hypothetical sale is deemed to take place should be built on a foundation of reality as far as is possible. However, it was deemed even more important not to defeat the intentions of statute by an undue concern for reality in what is essentially a hypothetical situation'.[17]

In order to understand the valuation issues, it is necessary to follow the assumptions to be used as set out in the Standard. These are summarised as:

(1) *The sale is a hypothetical sale;*

(2) *The vendor is a hypothetical, prudent and willing party to the transaction;*

[14] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 15.1.
[15] *RICS Valuation – Global Standards* (2017), Part 4: Valuation Technical and Performance Standards, VPS 4
[16] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 15.3
[17] *RICS Valuation – Global Standards* (2017), UK National Supplement UK VPGA 15.2.15

(3) *The purchaser is a hypothetical, prudent and willing party to the transaction (unless considered a 'special purchaser');*

(4) *For the purposes of the hypothetical sale, the vendor would divide the property, i.e. asset to be valued into whatever natural lots would chive the best overall price;*

(5) *All preliminary arrangements necessary for the sale to take place have been carried out prior to the valuation date;*

(6) *The property is offered for sale on the open market by whichever method of sale will achieve the best price;*

(7) *There is adequate publicity or advertisement before the sale takes place so that it is brought to the attention of all likely purchasers;*

(8) *The valuation should reflect the bid of any 'special purchaser' in the market (provided that purchaser is willing and able to purchase).*

It should be noted that UK VPGA 15.2.23 contains the guidance relating to special purchaser assumptions following the case *of IRC v Clay [1914] 3KB466* which established that where there is a known purchaser in the market who is prepared to purchase at a higher price than any other purchaser, the value of the property for tax purposes is that of the higher amount which the special purchaser is willing to pay. This is a significant difference from the general definition of market value in Valuation Technical and Performance Standard ('VPS')4 at the start of Section 3 above.

One final point of interest in relation to valuations of property for these taxes is to be found in the judgement of the recent case of *Palliser v HMRC [2018]* where it was held that '*hope value*' or the expectation of additional value being created in the future by the prospect of development is to be reflected in a valuation for taxation purposes.

The conclusion which can be drawn from the analysis of valuation for these taxes is that they are potentially complicated, technical and can require considerable specialist input in order to comply with the requirements of the various Taxes Acts.

## Income and Corporation Taxes

In addition to the taxes described above, there are occasions where it is necessary to value property for the purposes of the taxation of income derived from those properties. One example of this would be the carrying out of valuations to determine the amount of expenditure incurred on a property which will qualify for tax relief, in particular through the claiming of capital allowances. Another is valuation for employment benefit purposes if an employee receives an asset as part of his remuneration. A third is pre-owned assets income tax where there are five yearly valuations for chattels and land.

There is no specific Red Book standard for these valuations. Indeed, at UK VPGA 15.3 paragraph 5 it is noted that valuations in connection with capital allowances are beyond the scope of the UK VPGA 15 and refers valuers to the relevant HMRC and VOA manuals and guidance.

There is a statutory definition of market value within the Capital Allowances Act (CAA) however this is rather simplistically stated as being '*in relation to any asset, means the price the asset would fetch in the open market*'.[18] In addition there is often a requirement for a *'just and reasonable apportionment'*[19] to be made for the purposes of CAA 2001. The process for arriving

[18] CAA 2001 s577(1)
[19] CAA 2001 s562(3)

at this apportionment has evolved through negotiation between taxpayers, advisers and the VOA and has settled on a formula approach which requires the valuation of the land, the building and the plant and machinery fixtures within the building in order to arrive at the apportionment. A process which is set out in guidance in the VOA manuals, but lies outside of Red Book guidance.

There are a number of contentious valuation issues around the valuation of goodwill and trade related properties which have been tested in the courts over recent years (e.g. *Balloon Promotions,*[20] *Headingly Cricket Ground*[21] cases). Frequently these valuation tensions are created when there is a differing impact upon the tax treatment of properties depending upon which tax is being applied. For example, as noted above, in the context of trade related properties, the valuation split between the property valuation and the valuation of the goodwill of the business will create tax consequences. If the valuation is for SDLT purposes, then SDLT will be applied to the property value and not to the goodwill value, therefore a low valuation of goodwill will result in a higher SDLT liability. However, this higher property value will result in a potentially higher value of expenditure qualifying for capital allowances (or potentially a higher base cost for capital gains). Conversely, if there is a higher proportion of a purchase price attributed to the goodwill than to the property then this goodwill amount will be deductible over time for tax purposes, and the SDLT liability on the purchase will be reduced. These complexities of tax treatment create issues for valuers, particularly where there is a lack of agreement between the taxation, valuation and accounting professions.

Finally, in this section, it is worth highlighting issues around the definition of capital and revenue for tax (as opposed to accounting) purposes. From an accounting point of view the decision here is set out in accounting standards and is broadly principle-based. However, for tax purposes, it has been held that expenditure which is correctly treated as capital for accounts, may be revenue in nature for tax, particularly with reference to expenditure on the repair and upkeep of buildings.[22] These are complicated technical areas of taxation and accounting which often fall to valuers to make judgements. An area such as this is not covered by Red Book Standards and therefore valuation uncertainty and inconsistency can exist when applying these concepts to specific property expenditure.

## Business rates

Moving on to consider taxes derived from the occupation of property, it is the area of business rates valuation which has exercised considerable valuation and litigation time over a number of years, and at the time of writing, it should be noted that a detailed review of business rates was launched by HM Treasury at Budget 2020.[23]

In order to consider the valuation challenges, it is necessary to set out some background to business rates.

According to information published on the UK Government website, non-domestic rates, also known as business rates, cover all property consisting of land or buildings not classed as domestic property or exempt from rating. Business rates apply to a wide range of property

[20] *Balloon Promotions Ltd v Wilson*, SpC 524 [2006] STC (SCD) 167

[21] *Leeds Cricket Football & Athletic Company Ltd v The Commissioners for HMRC* [2019] TC 07362

[22] For HMRC commentary on this issue see https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim46901

[23] After the Budget announcement a call for evidence was released on 21 July 2020 https://www.gov.uk/government/consultations/hm-treasury-fundamental-review-of-business-rates-call-for-evidence

regardless of whether they are used for actual business purposes. They apply to, for example, beach huts and village halls as well as the shops, offices, and factories more commonly associated with business use.[24]

If a property has a mix of domestic and non-domestic uses, it will have both a non-domestic assessment (meaning it could be liable to business rates) and a Council Tax band. New rating lists (which contain the rateable values for non-domestic properties) are usually prepared every five years. The current list was published on 1 April 2017 based on rateable values from 1 April 2015, and there continues to be uncertainty over the date of the next revaluation, but as at 6 May 2020 the exact date is unconfirmed.[25]

The VOA gives a rateable value to each non-domestic property and this is used by local councils to calculate a property's business rates. A property's rateable value represents the rent the property could have been let for on a certain date set in law.[26] It may not be the actual rent paid on this date as the law makes a number of assumptions (such as the property being vacant, to let and in reasonable repair, and that the rent excludes any other charges, taxes or insurance). The rateable value is not the amount of tax paid, as it is subject to a multiplier[27] to arrive at the tax annual tax liability.

For most properties that are rented, there are three stages to a valuation:

(1) The VOA collects rent evidence (rent and lease agreement details) for most non-domestic properties. This evidence is analysed and adjusted by VOA surveyors to ensure that all evidence is considered fairly. The approach will be different, depending on the type of property (for example, bed and breakfast properties are valued using different information from shops).

(2) For most properties, they set common basic values per square metre for similar properties in the same area. Larger properties may have a lower value per square metre, in the same way that buying items in bulk will usually mean a lower individual price per item.

(3) The VOA then adjusts the basic value per square metre to reflect the property's individual features and applies this to the floor areas.

Some properties are not valued by using the floor area, so the valuation approach uses another means of comparison, for example for a bed and breakfast property a basic value is applied to the number of bed spaces.[28]

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[24] https://www.gov.uk/introduction-to-business-rates

[25] https://www.gov.uk/government/news/business-rates-revaluation-postponed The Government statement noted that: 'A revaluation of business rates will no longer take place in 2021 to help reduce uncertainty for firms affected by the impacts of coronavirus, Communities Secretary Rt Hon Robert Jenrick MP has announced. Legislation had been introduced to bring the next revaluation forward by one year from 2022 to 2021, but following the recent economic impacts of the coronavirus pandemic ministers want to ensure businesses have more certainty during this difficult time.'

[26] How non-domestic (business) properties are valued: https://www.gov.uk/guidance/how-non-domestic-property-including-plant-and-machinery-is-valued.

[27] Currently set at 51.2p for businesses in England for 2020/21: https://www.gov.uk/government/publications/22020-confirmation-of-the-2020-to-2021-business-rates-multipliers

[28] https://www.gov.uk/guidance/how-non-domestic-property-including-plant-and-machinery-is-valued

Given the above approach, it is necessary to consider why business rate system is presenting so many problems and is widely considered to be 'not fit for purpose' in its current state.[29] The problems identified can be classified into three main areas.

Firstly, the scope of the tax base, i.e. all non-domestic property and the broadly one-size-fits-all approach of using a rental value to determine the tax liability inevitably creates valuation uncertainty. Whether it is defining the open market, as shown by the recent Supreme Court case of *Telereal Trillium*[30] or considering the impact of building works on a property in the *Jackson* case[31] there is a constant flow of cases through the courts to settle valuation issues in this area. Consequently, there has been the build-up of a large body of case law and precedent which sits alongside the relevant legislation and causes both uncertainty of outcome and requires increased specialist knowledge of both taxpayers and the VOA in order to implement the rules.

Secondly the legislative framework which has created a requirement to provide individual assessments for each economic unit of each commercial property has resulted in valuation challenges around measurement and valuation approach. These problems have been exacerbated by legislative exemptions and amendments over the years to the regime which have created cliff-edge situations around areas such as the now-abandoned empty rates relief, small business rate relief and charitable rate relief, to name but three examples.

Thirdly the administrative burden, both on taxpayers and the VOA has created considerable delay and uncertainty around the application of this tax. As noted above, the frequency of revaluations is a major contentious issue as the economic circumstances of a property can vary significantly upwards or downwards within, say, a five-year timescale. There is an ability for taxpayers to challenge valuations through the Check, Challenge, Appeal framework,[32] although it is noted that there is a significant delay to the processing of challenges and appeals under this system due to the volume of claims submitted and this looks set to continue. Such is the scale, scope and complexity of the business rates regime that it is frequently identified as a separate, specialist category of surveying within the profession, a situation which creates a good body of up to date professionals, but which, it could be argued, does not create a transparent and understandable tax system.

## Council Tax

As noted above, the taxation on occupation for residential properties falls under the Council Tax regime. Local Councils set an annual tax based upon the valuation banding assessment of each domestic property in England and Wales. The value is based on the price the property would have sold for on the open market on 1 April 1991 in England and 1 April 2003 in Wales. All properties are banded on the same basis, including properties bought under discount schemes, such as Right to Buy. The purchase price discounts applied to these properties are not taken into account when setting the band.

Assessments are based on a number of factors, such as a property's size, layout, character and location. As noted earlier in this paper, however, given that the primary valuation approach will

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[29] See HM Parliament Treasury Committee report on *the Impact of Business Rates on Business*: https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/impact-of-business-rates-report-published-19-20/

[30] *Telereal Trillium v Hewitt* (Valuation Officer) [2019]UKSC23

[31] *Appeal Against a Decision of The Valuation Tribunal for England by David Jackson* (Valuation Officer) [2020]UKUT0078

[32] Further details available at https://www.gov.uk/guidance/rating-manual-section-7-challenges-to-the-rating-list/part-4-check-challenge-appeal

be a market one with a reliance on the interpretation of comparable data, there is considerable scope for subjectivity and diversity of opinion between taxpayers and VOA in these valuations.

A property may be revalued and put in a different band in a number of circumstances, such as part demolition, sub-division or conversion into multiple units or external changes to the local neighbourhood (such as improved transportation links), and this re-banding can happen either by the VOA or on appeal by the taxpayer.

Clearly the fact that there has been no revaluation to domestic property bandings for nearly thirty years means that to calculate the banding of a property as it would have been valued in 1991 is becoming increasingly onerous and liable to inaccuracy. Nevertheless, the system has become accepted, possibly by virtue of remaining unchanged for so long, in a way which is not mirrored in the business rates system discussed above.

# 6. Conclusions

Property valuation for taxation purposes is an issue which has evolved over time in order to accommodate the taxation legislation as it is enacted. Whether the changes relate to the introduction of new legislation or the modification of existing legislation, it is a common theme that there is a gap between the legislation itself and the specific valuation approach and practice which is often interpreted at a later date by the courts. One consequence of this is that it is possible to claim with reasonable certainty that there are few, if any, properties in the UK which do not have a current valuation for at least one type of taxation – be it in connection with transactions, economic ownership or occupation.

However, it is also clear that there is a wide variation in the nature of the valuations which exist and therefore considerable variance in the potential tax base were any one of the valuation bases to be adopted for the purposes of a net wealth tax.

This paper has identified that the uncertainties which would need to be addressed can be classified as technical – around definitions, valuation dates and valuation approaches; administrative – including revaluation cycles, challenges and appeals and the oversight of a system; and scope – where it is clear from a large body of valuation case precedent that any attempts to either create exclusions or differential treatments between assets inevitably leads to valuation challenges.