

Petitions briefing: Second home tax

Y Pwyllgor Deisebau | 9 Gorffennaf 2019

Petitions Committee | 9 July 2019

Petition number: 890

Petition title: Second Home Tax

Text of petition: We call on the National Assembly for Wales to urge the Welsh Government to take immediate steps to close a legal loophole which allows second home owners in Wales to avoid paying neither council tax nor business rates, at a time when local councils are forced to increase council tax to local ratepayers to plug the shortfall in their budgets.

800 second home owners in Gwynedd are now exploiting a legal loophole to avoid paying any council tax at all by registering their properties as small businesses. They are also exempt from paying business rates because of an anomaly in the system which categorises them as 'small businesses' although they are used as second homes for most of the year. In this financial year this equates to a loss of £1.5M from the public purse in Gwynedd alone; money that could be used towards providing social housing for local people.

Background

The term 'second home' is commonly used to refer to a dwelling that is not the main residence of its owner. A second home could be used as a holiday home by the owner of the dwelling and/or let to paying guests as self-catering holiday accommodation. It could also be a second home for work purposes. For example, where a person's employment location is beyond commuting distance from their main residence.

Council tax

Section 12B of the *Local Government Finance Act 1992* (the 1992 Act) refers to second homes as dwellings occupied periodically. There are two conditions that must be met for a dwelling to fit that definition: there must be no resident of the dwelling and the dwelling must be substantially furnished.

The definition used for council tax purposes would include, in addition to the examples noted above, furnished properties being marketed for sale or let, purpose built seasonal homes and unoccupied homes whose owner is required to live elsewhere because of their employment. For council tax purposes, *resident* means an individual who has attained the age of 18 years and has their sole or main residence in the dwelling (Section 6(5) of the 1992 Act).

The *Housing (Wales) Act 2014* inserted section 12B into the 1992 Act to allow local authorities in Wales to charge higher rates of council tax in respect of *dwellings occupied periodically*, more commonly called second homes.

Section 12B of the 1992 Act gives local authorities discretion to increase the council tax payable on *dwellings occupied periodically* in their areas. The maximum increase is an additional 100% of the standard council tax charge, i.e. a 100% council tax premium. On the first occasion a local authority chooses to charge such a premium, it must make its determination at least one year before the beginning of the financial year in which the premium will be charged.

A determination by a local authority to apply a council tax premium will automatically disapply the discount available under section 11(2)(a) of the 1992 Act – that discount applies to dwellings where there is no resident.

Non-domestic rates (also called business rates)

The Welsh Government has published [Guidance for Ratepayers: Non-Domestic Rates for Self-Catering Properties in Wales](#). This guidance sets out the criteria that must be met for self-catering accommodation to be liable for non-domestic rates, rather than council tax. The guidance notes :

...from 1 April 2010 in Wales, property is non-domestic, and therefore liable for non-domestic rates, if the VOA [Valuation Office Agency] is satisfied that:

- 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;
- the ratepayer's interest in the property enables them to let it for such periods;
- 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 it has actually been commercially let total at least 70 days during that period.

Ratepayers must continue to satisfy the non-domestic rates criteria for each property, for each 12-month period. Otherwise, unless the property falls within any other category of non-domestic property, the property is likely to be considered "domestic" and would be subject to an assessment of liability to council tax.

The criteria that must be met are statutory requirements and are set out in section 66(2BB) of the *Local Government Finance Act 1988* as amended by the *Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010*.

The *Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016* amended the above criteria from 1 April 2016 so that:

...businesses consisting of several self-catering properties at the same location or within very close proximity have the option to average the number of lettings days of the properties to meet the 70-day criterion where they are let by the same or connected businesses.

The VOA determines whether a property is categorised as non-domestic in accordance with the statutory requirements. The VOA is an executive agency sponsored by HM Revenue and Customs. As the VOA is non-devolved it is independent of the Welsh Government.

Where a property is listed as non-domestic self-catering accommodation, but does not meet the statutory criteria, the owner could face a back-dated council tax demand.

While owners of second homes may be liable for non-domestic rates, they may also be eligible for Small Business Rates Relief (SBRR), and therefore not have any liability after SBRR is applied.

Welsh Government guidance, [A new Small Business Rates Relief Scheme for Wales](#), provides further details of the scheme.

The ability to avoid paying either council tax or non-domestic rates has been described as a 'loophole' but the Welsh Government, as outlined in a letter dated 5 June 2019 to the Assembly's Petitions Committee, does not accept there is any loophole.

Welsh Government action

In her letter to the Chair of the Petitions Committee, the Minister for Finance and Trefnydd, Rebecca Evans AM, notes that her officials are currently reviewing the impact and use of the discretionary powers for local authorities to apply council tax premiums and whether the new legislation is operating as intended. She also notes that, in partnership with the Welsh Local Government Association, her officials have established a working group of local authority experts to review the use of council tax premiums and discounts.

The Minister's letter states:

There is no legal loophole. The Housing Act (Wales) 2014 provides discretionary powers for local authorities to apply premiums of up to 100% to the council tax bills for second homes and long-term empty properties. These provisions were introduced to assist local authorities in managing issues of local housing supply. They were not introduced as a revenue-raising measure.

In relation to Small Business Rates Relief, the letter notes:

Small Business Rates Relief is fully funded by the Welsh Government, ensuring local authorities do not lose revenue as a result of businesses in their area receiving this relief. All the non-domestic rates revenue raised in Wales is pooled and distributed to local authorities as part of the annual local

government settlements. Most councils in Wales generally receive more revenue from the pool than they contribute to it.

National Assembly for Wales action

The issue of second home owners switching properties from council tax to non-domestic rates has been raised many times in the Senedd.

On [22 May 2019](#), Sian Gwenllian AM asked the Minister for Finance and Trefnydd about local taxation on second homes. She suggested in her question that a proposal from nine Welsh local authorities that would remove the current criteria relating to self-catering accommodation and “...replace it with a principle that every property that is used as a domestic property should remain as a domestic property, whatever its use” should be taken forward.

The Minister responded:

I've had exactly this conversation with local authority leaders in our finance sub-group this morning, where we were discussing this specific issue of concerns relating to individuals who decide to change the status of their property to move themselves out of council tax into non-domestic rates, where they could then potentially benefit from our rate relief schemes.

So, as you know, because we've had some discussions on this before and I know that you will be meeting with my officials with Llyr Gruffydd on 4 June to discuss the issue further, a working group of local authority practitioners has been set up to discuss the issue of council tax premiums and discounts and to consider the current position across Wales. There is a further meeting for early June, and I'd be more than happy again to meet with you after that meeting to discuss the findings of that. This is an issue that we are very alive to, and we're very keen to ensure that those who are able to pay council tax and who should be paying council tax certainly do so because, as I've outlined, it's extremely important in being able to support our local authorities to undertake all the work that we require them to do. But, we are absolutely alive to this issue and discussions have been had as recently as this morning.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.