

Judicial Communications Office

20 SEPTEMBER 2018

COURT DELIVERS JUDGMENT ON THE SETTING OF COUNCIL RATES

Summary of Judgment

The Court of Appeal today set out the preferred approach for the determination by District Councils of domestic rates.

This was an appeal against the dismissal at first instance of Mid-Ulster District Council's judicial review of the determination by the Department of Environment ("DoE") of the rate support grant ("RSG") payable to it for the financial year 2015/2016. Both parties agreed that in order to determine the amount of RSG it is necessary to apply a conversion factor to the capital value penny rate product for domestic properties to make it comparable to the net annual value ("NAV") penny rate product for non-domestic properties. The issue was whether to use an individual conversion factor specific to each council or an average conversion factor as was used by the DoE. The trial judge concluded that either approach could have been adopted and that it was a matter for the discretion of the DoE to determine which approach to follow. Both parties, however, submitted that the learned trial judge was in error in taking that approach and that the issue should be determined one way or the other as a matter of statutory construction.

Background

Prior to 1997 all domestic and non-domestic hereditaments¹ were valued on the basis of their NAV which was defined as the rent for which the hereditament might be reasonably expected to let. The Rates (Northern Ireland) Order 1977 ("the 1977 Order") provided for the levy of a uniform amount of rates in the pound to be set by each council on every hereditament's rateable value. A revaluation of non-domestic hereditaments (but not domestic hereditaments) took place in 1997. Since then councils have struck two separate rates, domestic and non-domestic. That was necessary in order to avoid any unfairness to the owners of non-domestic hereditaments. Regulations were introduced to ensure that the rate levied on domestic hereditaments was increased in the same proportion as the increase, as a result of the revaluation, of non-domestic hereditaments in each Council area. A similar process occurred in 2001.

The increase in value as a result of the revaluation of non-domestic hereditaments, however, was not uniform throughout Northern Ireland, for example, if the value of

¹ A hereditament is any item of property, either a corporeal hereditament (land or a building) or an incorporeal hereditament (such as a rent), that can be inherited.

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such hereditaments in Council area A doubled the increase in rateable burden for domestic properties also doubled. If the increase in value of non-domestic hereditaments was threefold in Council area B the same threefold increase in rateable burden was imposed on domestic properties in that council area despite the fact that the domestic properties may both have appeared in the valuation list at the same value.

In 2005, Land and Property Services ("LPS") embarked on a revaluation of domestic hereditaments in Northern Ireland. In a departure from previous practice the valuation was conducted on a capital rather than a rental basis. The 1977 Order was amended by the Rates (Making and Levying of Different Rates) Regulations (NI) 2006 ("the 2006 Regulations") to provide for the making and levying of different regional and district rates on the rateable NAV of hereditaments and the rateable capital values of hereditaments. The amendment provided different conversion factors for each Council whereby a capital value district rate made by a district council is linked to the NAV district rate made by that council; the formula was to ensure that the division of the district rate burden between domestic premises and non-domestic premises, before the general grant from the DoE is taken into account, would not change as a result of the revaluation of non-domestic premises and as a result of the introduction of capital valuation for domestic premises.

Issue in this Appeal

The issue in this appeal was about the distribution of the available sum. The DoE's means for the distribution of the resources element of the general grant was based on a "wealth minus needs" formula designed to ascertain a district council's requirement for funding support relative to other districts and was calculated on the products of the rates of one penny in the pound i.e. gross penny rate product ("GPRP"). The DoE was also required to determine the amount of "rates support grant" ("RSG") payable to a council as calculated in accordance with its share of the Northern Ireland population (the calculation of needs was not in issue in this litigation). The relevant legislation provides that where the ratio of the council's GPRP to the Northern Ireland GPRP is less than the ratio of the council's population to the Northern Ireland population the difference constitutes a negative variance. RSG is payable to all councils with negative variances in proportion to the extent of such variances.

The legislation makes no provision for a conversion factor in the determination of the GPRP. The capital values of the domestic properties are clearly assessed on a different basis from the NAV product for non-domestic properties and the result is that the sum produced from the capital values from an estimated penny product of domestic hereditament is 70 times greater than the sum produced from non-domestic hereditaments. Both parties agreed that to add the capital values product to the NAV product undermines the purpose of the legislation which was to give appropriate weight to the influence of both products in the assessment of the wealth

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of the district council. The dispute in this case concerned whether the conversion factor applied to the capital value in each council should be the individual conversion factor set out in the 2006 Regulations as contended for by Mid-Ulster District Council (“the appellant”) or an average of the Northern Ireland conversion factors as submitted by the DoE (“the respondent”).

Consideration

Both parties contended that the conversion factor must be applied to the penny rate product for capital values in order to calculate the GPRP. The calculation of the GPRP is designed to reflect the wealth of each district council. In the absence of a conversion factor the product of the domestic and non-domestic GPRPs will add a capital value to a rental value. The Court of Appeal said it is plainly proper that wealth and comparative wealth should be assessed by rendering the units of value comparable: “Any other approach is likely to produce a distorted outcome”. It accepted, therefore, that the GPRP must be assessed by converting either the capital values to NAV or vice versa.

Turning then to the submissions of the appellant, the Court accepted that the calculation of GPRP for capital values requires the assessment of the gross rate income for any district. The gross rate income consists of the capital valuation list multiplied by the capital rate. The capital rate is determined by applying the individual conversion factor to the NAV. The GPRP, however, requires that product to be divided by the capital rate set. In effect, therefore, the individual conversion factor is cancelled out and the outcome reflects the valuation list.

The respondent placed considerable emphasis on the fact that where two councils have the same rateable capital valuation that portion of the GPRP in respect of each council will be the same. The respondent also contended that the wealth of each council’s capital value is the same and that if there is to be a conversion it has to respect that starting position. There was nothing in the legislation, however, which points towards such a mechanism.

The question in this case was how one approaches the issue of change in value of domestic hereditaments. The Court of Appeal said it was common case that in respect of rate collection the legislation makes detailed provision for the application of a conversion factor in each district council area to ensure that the rate of increase in the value of non-domestic hereditaments is mirrored by an equivalent increase in domestic values. The Court said there was no empirical evidence to suggest that the rate of increase in domestic values is the same as the increase in non-domestic values. On the other hand the underlying premise in the approach taken by the respondent is that the increase in value of domestic properties is broadly uniform throughout Northern Ireland. For that reason it is contended that the value of properties bearing the same value in the valuation list are the same. The Court commented that, again, there is no empirical evidence to suggest that such an assumption is well founded: “In our view it cannot be said, therefore, that either

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approach is preferable. It may well be that either approach was open to the DoE as a matter of policy but the issue in this case is what the regulations actually require.”

Having decided that the domestic or non-domestic values had to be converted to make a sensible estimation of wealth, the Court said that the next step is to imply a conversion factor to one or other that is necessary and proper. The legislation contains a mechanism for the correlation of domestic and non-domestic values within each district council area. That mechanism applies a conversion factor to the capital values to achieve the correlation. The Court commented that there is no other conversion mechanism within the statutory background and it therefore follows that it is proper to imply a conversion factor to domestic values. The next step is to identify from the statutory background the factor to be applied. The Court said that each factor within the legislation is designed to attribute to capital values within each district council area growth in value at the same rate as the non-domestic revaluation: “The underlying statutory assumption, therefore, is that increases in value occur at different rates in different council areas for domestic and non-domestic properties. We consider that such a proposition is as valid as the assumption that increases in domestic properties occur at a uniform rate throughout Northern Ireland.”

The respondent contended that to apply the individual factors is to distort the value of domestic hereditaments. The Court commented that that submission depends upon the proposition that value increases uniformly and that it follows that if values are increasing at different rates the wealth of districts is also increasing at different rates:

“Once one accepts the validity of the approach to increases in valuation for the purposes of rate collection the argument that properties in different council areas with the same valuation ought to be treated similarly no longer has any purchase. We consider, therefore, that the statutory background establishes that it is proper to imply into the calculation of each council’s wealth the conversion factor to the capital values of each district council area set out in the 2006 Regulations.”

Conclusion

The Court of Appeal allowed the appeal and concluded:

- that it is necessary and proper to imply a conversion factor to the capital rateable values for the purpose of determining each council’s wealth;
- that there is little assistance to be gained in the ascertainment of the correct conversion factor from the Rates Regulations (Northern Ireland) 2007;
- that the appellant’s position essentially follows from the implication that domestic capital values in any district council area increase at broadly the same rate as non-domestic NAVs;

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- that the respondent's position reflects the assumption that domestic capital values in Northern Ireland increase at a uniform rate;
- that each position is tenable as a matter of policy in determining wealth;
- that the statutory background provides the key to the appropriate conversion factor; and
- that the appellant's position is reflected in that background and is to be preferred.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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