**Briefing Note for Alba & The British Hydro Association**

**Hydro Electric Generating Schemes – Rating Appeals**

**Revaluation 2017 appeals – referral to Lands Tribunal for Scotland**

Background

Hydro scheme operators will be aware of the ongoing issues relating to the valuation of this class of property for rating purposes.

The original appeal in respect of the 2010 revaluation (Old Faskally & others v Assessor for Tayside) remains unresolved and this case has been referred, for a second time, by the judges to the Valuation Appeal Committee for their further consideration. Despite current difficulties, it is hoped that the Committee will be in a position to give further consideration to this case in reasonably early course.

Notwithstanding the above, there are large numbers of outstanding appeals relating to the 2017 revaluation and the purpose of this note is to update appellants on important matters relating to the regulations governing the treatment of these appeals.

Referral to Lands Tribunal for Scotland (LTS)

Whilst the ‘Old Faskally’ case may assist in resolving some of the matters under dispute; we expect the 2017 revaluation appeals to be determined before the LTS.

In order for this to occur, it will be necessary to ensure that all appeals are formally referred to LTS.

In this regard, appellants need to have particular regard to Regulation 4 of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 which reads as follows:

**Application for referral to the Tribunal**

**4.**—(1) The assessor or the appellant may make application to the Committee seeking referral of the appeal to the Tribunal for determination under section 1(3A) of the 1949 Act, but any such application must be made—

(a)more than 14 days prior to any date set under regulation 8 for the hearing of the appeal; and

(b)more than 6 months prior to the disposal date for the appeal.

(2) An application under paragraph (1) shall include representations by the applicant as to which of the criteria set out in sub-paragraphs (a) to (e) of paragraph (1) of regulation 5 apply to the appeal.

(3) The party who makes an application under paragraph (1) shall, at the same time as he makes that application, send a copy of it to the other party, and that other party may make written representations to the Committee on the application, and shall send a copy of any such representations to the applicant.

(4) The assessor and the appellant may make joint application to the Committee in accordance with the terms of section 15(2AA) of the Local Government (Financial Provisions) (Scotland) Act 1963 requiring referral of the appeal to the Tribunal for determination under section 1(3A) of the 1949 Act, but any such application must be made—

(a)more than 14 days prior to any date set under regulation 8 for the hearing of the appeal; and

(b)more than 3 months prior to the disposal date for the appeal.

With regard to the 2017 revaluation appeals, the disposal date, as referred to in the extract above, is 31st December 2020. Consequently, in terms of 4 (1) where an application requesting the Committee refer the appeal to LTS is not being made jointly, this application requires to be made by 29th June 2020.

In an effort to ensure a consistent, co-ordinated and pragmatic approach to this process, contact has been made with all individual Assessors and their Valuation Appeal Committee Secretaries, requesting assessors to confirm whether they are prepared to support an application for joint referral, which means that such needs to be done by 29th September 2020 and the process is somewhat simplified in that representations as to the specific criteria (4 (2)) do not require to be provided.

The table below provides a summary of the individual assessors and the Committee Secretaries and their response to the request for them to support joint referral to LTS.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Valuation Authority** | **Assessor Agreeable to Joint Referral** | **Assessor Name & Email** | **Council Area** | **Committee Secretary** | **Secretary Email** |
| Ayrshire Valuation Joint Board | YES | Helen McPhee  assessor@ayrshire-vjb.gov.uk | East Ayrshire, North Ayrshire & South Ayrshire | Alan Urquhart | alanm.urquhart@gmail.com |
| Central Scotland Valuation Joint Board |  | Pete Wildman  assessor@centralscotland-vjb.gov.uk | Clackmannanshire, Falkirk & Stirling | Allan McIntyre | allan.macintyre@amilaw.co.uk |
| Dumfries & Galloway Council | YES | James Doig  assessor@dumgal.gov.uk | Dumfries & Galloway | Brendan Kearney | brendankearney1950@sky.com |
| Dunbartonshire and Argyll & Bute Valuation Joint Board | YES | David Thomson  assessor@dab-vjb.gov.uk | Argyll & Bute | Alan Urquhart | alanm.urquhart@gmail.com |
| East & West Dunbartonshire | David Clapham | lawagents@davidcclapham.co.uk |
| Fife Council |  | Heather Honeyman  fife.assessor@fife.gov.uk | Fife | Scott Milne | smilne@thorntons-law.co.uk |
| Glasgow City Council |  | Hugh Munro  assessor@fs.glasgow.gov.uk | Glasgow City | David Clapham | lawagents@davidcclapham.co.uk |
| Grampian Valuation Joint Board | NO | Ian Milton |  |  |  |
| aberdeen@grampian-vjb.gov.uk | Aberdeen City | James Steel | james\_steel@outlook.com |
| kdg@grampian-vjb.gov.uk | Kincardine, Deeside & Gordon |  |  |
| banff@grampian-vjb.gov.uk | Banff | Hilary Macandrew | hilary.macandrew@grantsmithlaw.co.uk |
| elgin@grampian-vjb.gov.uk | Moray |
| **Valuation Authority** | **Assessor Agreeable to Joint Referral** | **Assessor Name & Email** | **Council Area** | **Committee Secretary** | **Secretary Email** |
| Highland & Western Isles Valuation Joint Board | YES | William Gillies  assessor@highland.gov.uk | Highland & Western Isles Islands | Donald MacKenzie | dmm@mackenzie-law.co.uk |
| Lanarkshire Valuation Joint Board | NO | Gary Bennett  assessor@lanarkshire-vjb.gov.uk | North & South Lanarkshire | Stewart Graham | stewartgraham@stodarts.co.uk |
| Lothian Valuation Joint Board |  | Graeme Strachan  assessor@lothian-vjb.gov.uk | City of Edinburgh, East, Mid & West Lothian | David J. C. Nicol | davidnicol@allanmcdougall.co.uk |
| Orkney & Shetland Valuation Joint Board |  | Dennis Stevenson |  |  |  |
| assessor@orkney.gov.uk | Orkney Islands | David Fairnie | david.fairnie@lowsorkney.co.uk |
| assessor@shetland.gov.uk | Shetland Islands | Eric Peterson | eric.peterson@tait-peterson.co.uk |
| Renfrewshire Valuation Joint Board | N/A (no hydro appeals) | Kate Crawford  assessor@renfrewshire-vjb.gov.uk | Inverclyde, East Renfrewshire & Renfrewshire | Gordon Macleod | gordon.macleod@reidlaw.co.uk |
| Scottish Borders Council |  | Brian Rout  assessor@scotborders.gov.uk | Scottish Borders | Sheena West | sheena.west77@gmail.com |
| Tayside Valuation Joint Board | YES | Alastair Kirkwood |  |  |  |
| angus@tayside-vjb.gov.uk | Angus | Ernest S Boath | ErnestBoath@millerhendry.co.uk |
| dundee@tayside-vjb.gov.uk | Dundee City | Elizabeth N McGillivray | ENM@bowmansolicitors.co.uk |
| perth@tayside-vjb.gov.uk | Perth & Kinross | Alistair G Napier | agn@comlegcen.com |

Appeals Where the Assessor is in Agreement to Joint Referral to LTS

Appellants whose appeals are in a district where the assessor is in agreement to joint referral to LTS require to make an application to the Committee in terms of 4 (4) prior to 30th September 2020 and more than 14 days before any hearing date for the appeal.

Appeals Where the Assessor is not in Agreement to Joint Referral to LTS

Where the assessor has not agreed to support joint referral to LTS, the appellant requires to make application to the Committee before 30th June 2020 in terms of 4 (1), (2) & (3) above. Furthermore, the appellant is required to set out in their application representations in relation to the following matters listed in Reg.5 (1) which provides the grounds on which a referral is to be granted, namely that:

1. The facts of the case are complex or highly technical;
2. The evidence to be given by expert opinion is complex or highly technical;
3. The law applicable to the case is uncertain or difficult to apply;
4. The case raises fundamental or general issues likely to be used as a precedent for other cases;
5. The subjects relate to more than one valuation area and the valuations appealed in more than one such area.

Appellants should be aware that the representation should not simply be a mere reference to one or more of the heads specified above but should include an explanation of the features of the particular case in question which bring it within the scope of the relevant head or heads.

Summary

Whilst considerable efforts have been made in an attempt to streamline the administration necessary to ensure that all hydro appeals may be referred expediently to the Lands Tribunal for Scotland, the position taken by some assessors will require appellants to act swiftly in order to ensure that their position is not potentially compromised.

Furthermore, it will be noted that in some instances no response has been received from an assessor and therefore the position is unclear.

**The recommendation is that all appellants should ensure that joint referral is supported by their assessor or make formal application to the Committee before 29th June 2020.**

This briefing note has been prepared by Calum Innes BLE FRICS

Email: calum.innes@galbraithgroup.com

Telephone: 07909 978643