

# BUSINESS RATES UPDATE

## To Alba Members

1/7/2017

### 1) Negotiations with Scottish Government

At the last meeting with Scottish Government on 31<sup>st</sup> May, the Scottish hydro “Working Group” (BHA, Alba, Scottish Renewables) presented its case on business rates to the energy minister, Paul Wheelhouse. The presentation, made by Kenny Hunter of MEG Renewables, is attached as an appendix to this update.

The analysis reveals a systemic problem in the valuations of small hydro.<sup>1</sup> This was illustrated to Mr Wheelhouse by comparing the valuations ascribed to hydropower with those put on wind power. Averages were drawn from wind sites that have been developed under the same financial framework of Feed-in-Tariffs as small hydro.

Where FiT-level wind sites now receive Rateable Values<sup>2</sup> averaging 10% of their total revenues, FiT-level hydro sites receive Rateable Values averaging 24% of revenue.

Put simply, hydro ends up being charged proportionately 2-3 times more in business rates than wind despite being, proportionately, no more valuable.

To solve this problem, Scottish Government and the hydro industry agreed to explore the possibility that a hydro-specific amendment could be made to Plant & Machinery legislation, so that valuations for small hydro were brought back into line with comparable industries (ie Rateable Values for hydro sites of 8-10% of their turnover).

Assurances were made to the hydro industry that finance secretary Derek Mackay would be briefed on the evidence and that a response would be forthcoming – once findings of the Barclay Review (of business rates across all sectors) have been presented in July.

Dougie McLaren, principal adviser to the Scottish Government on business rates, is to consider – in consultation with the industry – the wording of an amendment to the Plant & Machinery Order, or other statutory mechanism, that could produce the desired effect on hydro, without undesirable repercussions for other industries.

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<sup>1</sup> Using the “receipts and expenditure” method, the Assessor has generated valuations for hydro by assuming a “hypothetical divisible balance” between tenants and landlords of hydro sites. The Assessor claims this division is stipulated by Plant & Machinery legislation. In the Assessor’s method of valuation, the tenant is assumed to own 39.8% of the plant and machinery on a site, despite the fact this theoretical split of ownership does not exist in practice. In most cases, the tenant (or operating company) owns 100% of a hydro.

<sup>2</sup> Rateable Values, or RVs, should not be confused with actual rates payable. Business rates are derived from the Rateable Value according to the “poundage” multiplier, which is currently set at 0.492 for most hydro (the small business multiplier is 0.466).

## **2) Timescales**

Cabinet Secretary for Finance, Derek Mackay, has agreed to a meeting on July 19<sup>th</sup> – to be briefed on the hydro case by Kenny Hunter – and Scottish Government has offered assurances of a formal response, once the Barclay review has submitted findings, also in July.

The system of relief for small hydro schemes of up to 1MW capacity – a 12.5% cap on increases to previous rates payable – will remain in place until April, 2018. This provides a timescale within which a solution needs to be reached.

## **3) Appeals & the Lands Tribunal**

While Scottish Government considers a solution, appeals need to be registered. The legal position for hydro must be properly determined, so that an alternative resolution can be pursued, should Government fail to act.

The Assessor does not consider the standard appeals committees to be competent to tackle the complexity of the problem of business rates for hydro.<sup>3</sup>

Both Highland and Tayside assessors (William Gillies and Alastair Kirkwood) have, therefore, agreed with the hydro Working Group that a group appeal, made on behalf of the industry as a whole, may be fast-tracked to the Lands Tribunal.

In the meantime, appeals should be lodged by as many hydro sites as possible: so that the appeals system shows evidence that the problem is widespread; and so that a representative group may be selected as the designated “appellant”.

Once advice has been taken from legal counsel, a meeting with the Assessor will be sought to discuss the basis on which the case may be presented to the Lands Tribunal. Depending on the outcome of this meeting, the case may be pursued either in agreement with the Assessor, or in dispute.

## **4) Legal advice from counsel**

A draft briefing for counsel has been produced by Calum Innes of CKD Galbraith, to be considered and amended by representatives of Alba and the BHA.

Once agreed, the brief will be presented to candidate QCs with expertise in ratings legislation. The QC best placed to provide opinion will be selected to produce a formal written “Opinion” on the position of the hydro industry.

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<sup>3</sup> No party wishes to see a repeat of the previous hydro appeal (“Old Faskally/Alba”), which remains unresolved five years after it was first heard by the Tayside Appeals Committee.

The Opinion from counsel will establish the legal basis of any case the industry might wish to bring before the Lands Tribunal.

Once Opinion has been received, the hydro industry can meet the assessor, equipped with a proper understanding of its likely position in the eyes of a court.

## 5) Advice to Alba members<sup>4</sup>

Alba is providing advice to members to appeal excessive Rateable Values now.

An appeal does not need to contain details, it merely requires to be lodged and registered by the appeals system. The precise terms of an appeal may be provided later.

The process is simple and may be completed as follows:

1. Go to the Scottish Assessors website: <https://www.saa.gov.uk>
2. In the box marked *To Search For A Rateable Value*, enter the postcode of your site.
3. Click on your site, then click on *Make an appeal*, then click on *Continue to appeal form*.
4. In Part B – *Reasons for Appeal* – click the box that says *Revaluation*, but leave everything else blank.<sup>5</sup>
5. In Part C – *Grounds for Appeal* – write simply: “The valuation is erroneous and overstated.”
6. Where it asks for your proposed Net Annual Value and Rateable Value, leave the boxes blank, but fill in the “effective date” as 1<sup>st</sup> April, 2017.
7. In Part D – *Details of Appellant* – click the “Proprietor” option and it should produce your details automatically.
8. There is no need to put in the name of an agent, or a reference at the bottom, only email address and telephone number.
9. Click *Continue* and the rest is self-explanatory: you should receive an email confirming the appeal.

Contact Alex Linklater at Alba with any queries.

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<sup>4</sup> As a standard disclaimer, it is necessary to state that Alba cannot be held liable for the advice it provides. This must therefore be understood merely as guidance.

<sup>5</sup> This option also says: “Only a valid option in limited circumstances after 30<sup>th</sup> September, 2017.” The grammar of this is misleading. It means that this is indeed a valid option, but only until September, 2017, after which it ceases to be valid (except in limited circumstances).

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