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| SUBJECT: | BUSINESS RATES POOLING |
| REPORT OF: | Director of Resources |
| RESPONSIBLE OFFICER | Director of Resources |
| REPORT AUTHOR | Jim Burness email: JBurness@chiltern.gov.uk |
| WARD/S AFFECTED | All |

1. Purpose of Report

The report seeks agreement to proceed to be part of an expression of interest for business rate pooling for 2016/17, if the Government determines pooling is to continue.

RECOMMENDATION

1. To agree to be part of an expression of interest for forming a business rate pool for 2016/17, if the pooling arrangements continue.
2. To indicate which pooling options from Table 1 would be acceptable to the Council, and if any are unacceptable.
3. To delegate to the Director of Resources, in consultation with the Leader and the Support Services Portfolio Holder, authority to make the final decision to be part of any pool, and any subsequent decision to confirm intention to pool and the signing of an Inter Authority Agreement.

2. Executive Summary

The report explains the background and mechanics of business rate pooling. It sets out the issues that need to be considered before finally committing to a pooling arrangement. The report illustrates the various pooling combinations and their financial effects.

3. Reasons for Recommendations

The information available on the likely level of business rates collectable in 2016/17 across Buckinghamshire indicates there are benefits from pooling. There are various pooling combination options which have differing levels of financial benefits.

4. Business Rate Pooling

- 4.1 The Business Rates Retention scheme came into force from April 2013 and changed the way that income from Business Rates was distributed between Central Government and local authorities. The details of how the current system works is shown in Appendix 1.
- 4.2 The benefit from pooling arises from being able to reduce the amount of any overall excess of business rates collected in the pooling area that is paid over to the Government. The authorities in the pooling area are committed to make the same overall payment to Government as they would if they had not joined a pool. Therefore the risk of business rate income falling below the Government forecast rests with the pool, and although safety net arrangements still apply they would only become payable if the combined pool income fell below 92.5% of the combined baseline.
- 4.3 In 2015/16 there are 27 business rate pools covering 193 authorities. Pooling arrangements are reviewed annually with a positive decision required from each authority every year to either continue or not, therefore there is no long term commitment or risk from pooling.
- 4.4 The decision on the actual composition of any pool would be based on an assessment of each authorities forecast of its business rates income for the year ahead, and consideration of the robustness of those forecasts. In the first three years of the new system there was not sufficient confidence among the Bucks authorities about their business rate forecasts due to uncertainties about the level of provisions that need to be made for valuation appeals and write offs. It is felt that for 2016/17 the authorities' positions will be much more certain.
- 4.5 When considering whether to enter into a business rate pool a number of issues need to be considered and these are as follows:
- What are the risks to the various authorities' forecasts of business rates that could affect a) the choice of best combination of authorities, and b) avoid the risk of falling below the Government's forecasts.
 - How it will be ensured that no participant in the pool is worse off as a result of pooling.
 - How will any net gain from pooling be used or distributed.
 - What are the governance arrangements for pooling that would be contained in an inter-authority agreement that provides the legal basis of the pooling.
- 4.6 The first point will be informed by collection experience in 2014/15 and the current year's position. It will also be influenced by the level of provision made in the authorities' accounts for appeals, and information from the Valuation Office on outstanding appeals. From the table in Appendix 1 it can be seen that in the current year Chiltern is forecasting to have growth above the Government's

assumed baseline and therefore would be subject to a levy. This position is anticipated to be repeated in 2016/17.

4.7 The remaining points will be covered in the Inter Authority Agreement that will be required for the pooling arrangement. This will provide that:

- Every participant in the pool must financially be at least in the same position through pooling as they would have been if they had remained independent, and that no extra funding is distributed until this is achieved.
- In respect of use of any additional resources the simplest way approach is allow these to be distributed back to the authorities in the pool, and they separately decide how to use the resources, i.e. it does not form part of the Inter Authority Agreement.

4.8 A draft Inter Authority Agreement based on models used by other pools is attached as Appendix 2, and cover:

- The accountable body for the pooling arrangement
- Arrangements for the provision of information to the accountable body
- How the net position of the pool will be calculated and how financial adjustments between authorities will be made.
- A dispute resolution mechanism

This would be worked up with specific details once agreement has been reached regarding which authorities will be part of the pool.

4.9 The recent announcements by the Chancellor on the devolution of business rates fully to local authorities by 2020 have raised the question of whether there will be any future invitations from Government to form pools. It is officers understanding that this matter is currently with Ministers for consideration, and it is unknown when there will be any announcements.

5. Options

5.1 The Buckinghamshire authorities have commissioned independent advisers to model the various pooling options for 2016/17. These are set out in the table below and show the pooling gain as the total amount of business rates retained within the pooling authorities compared to if they remain separate for business rate retention purposes.

5.2 If Chiltern was not part of any pool it would pass over £500k additional in business rates to the Government, pooling would reduce this figure.

Table 1: Financial Gains from the Various Pooling Options

| | Option | Top Up / (Tariff) £m | Levy Rate | Pooling Gain £m | Rank by Gain |
|----|----------------------|----------------------------|--------------|--------------------|------------------|
| 1 | AVDC | 10.9 | 0% | 1.1 | 5 th |
| 2 | SBDC | 16.2 | 0% | 0.8 | =8 th |
| 3 | CDC | 20.3 | 0% | 0.5 | 10 th |
| 4 | WDC | 2.0 | 0% | 0.9 | =7 th |
| 5 | AVDC, SBDC | (0.2) | 0% | 1.9 | 1 st |
| 6 | AVDC, CDC | 3.9 | 0% | 1.6 | =2 nd |
| 7 | AVDC, WDC | (14.4) | 21% | 0.8 | =8 th |
| 8 | SBDC, CDC | 9.2 | 0% | 1.3 | 4 th |
| 9 | SBDC, WDC | (9.2) | 15% | 0.9 | =7 th |
| 10 | CDC, WDC | (5.0) | 9% | 1.0 | 6 th |
| 11 | AVDC, SBDC, CDC | (7.2) | 12% | 1.6 | =2 nd |
| 12 | AVDC, SBDC, WDC | (25.5) | 32% | 0.4 | 11 th |
| 13 | AVDC, CDC, WDC | (21.4) | 28% | 0.6 | 9 th |
| 14 | SBDC, CDC, WDC | (16.2) | 24% | 0.8 | =8 th |
| 15 | AVDC, SBDC, CDC, WDC | (32.5) | 37% | 0.2 | 12 th |

Note: All pooling options include Bucks CC and Bucks Fire.

- 5.3 The options give a range of overall financial gains from £0.2m (Option 15) to £1.9m (Option 5). For Chiltern the potential benefit would be between 10% and 15% of the total depending on the option, giving a range of additionally retained business rates of £20k (Option 15) to £270k (Option 6).
- 5.4 At this stage pending knowing the preferences of all the authorities, Members can only express any preferred options, or any identify any options that are unacceptable.
- 5.5 Not being part of a pool will mean that there is the likelihood that some of the business rate growth in Chiltern will be taken by the Government via a levy arrangement in accordance with the basic operations of the business rates retention scheme.

6. Corporate Implications

Pooling arrangements are reviewed annually therefore there is no long term financial commitment or risk to the Council. Any financial benefits will be estimated in advance of committing to any pooling arrangements.

Any additional business rates income that may be retained will not be used to support recurring revenue expenditure, and will not be factored into the financing of budgets for council tax purposes. Any additional income would be used for one off expenditure.

The legal arrangements for any business rates pool will be contained in an inter-authority agreement.

7. Links to Council Policy Objectives

Consideration of Business Rates Pooling is part of good financial management.

8. Next Step

- Councils submit expressions of interest by deadline to be set by Government, dependant on the Government confirming the continuation of pooling.
- Confirmation to Government of intention to be a business rate pool, late January 2016.

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| Background Papers: | None |
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The Business Rates Retention Scheme

Prior to April 2013, billing authorities such as Chiltern District Council received business rates income from businesses and paid all amounts collected over to a Central Government 'pool' in full. They then received a grant back from Central Government from this pool.

From 2013/14 billing authorities continue to collect all business rates income into the Collection Fund, but this is now directly distributed to each preceptor using the following percentages.

- | | |
|------------------------------------|-----|
| • Central Government | 50% |
| • Billing Authority (e.g. SBDC) | 40% |
| • County (e.g. BCC) | 9% |
| • Fire Authority (i.e. Bucks Fire) | 1% |

As business rates are still part of the overall system for funding local authorities the income from business rates is taken into account in the Government's assessment of what funding should be made available to individual authorities based on their assessment of the spending needs of authorities. Where the business rates income is greater than the assessed need the authority is required to pay over to the Government the excess as a tariff payment, where the income is less the authority will receive additional funding from Government as a top up payment. In two tier areas district councils will be subject to tariffs, and counties will receive top ups.

The Business Rates Baseline

When Central Government implemented the Business Rate Retention Scheme, it set out:

- What it expected each authority would receive in Business Rates, and
- Its expectation of what each authority would need from Business Rates to fund services (the 'baseline').

Any excess over what was deemed to be needed, is payable to Central Government as a 'Tariff'.

The figures for CDC are shown in the following tables.

Growth / Reduction in Amounts Collected

The actual amount collected in Business Rates income will of course differ from the estimated amounts.

- Additional Business Rates income represents growth, and CDC get to keep 50% of any additional income over and above its Baseline position. The other 50% is payable to Central Government as a Levy.
- On the other hand a reduction in Business Rates income results in a loss to CDC. However this loss is limited to 92.5% of the Baseline position. Any loss greater than this is covered by a 'Safety Net' payment from Central Government.

Effect of new Business Rate Compensation Grants

Working out whether local authorities have collected more from Business Rates than the Baseline has also been complicated by Central Government making changes to the Business Rates scheme.

Central Government has:

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- Limited the annual increase in Business Rates to 2%, whereas the Baseline figures were calculated based on the normal RPI increase.
- Extended the Small Business Rate Discount Scheme, whereas the Baseline figures did not take this extension into account.
- Announced in the Autumn Statement, a new relief for retail premises and further relief for businesses that take on retail premises that have been empty for 18 months or more.

This means that local authorities are now collecting less than they otherwise would have done. Central Government is therefore paying local authorities additional grants to compensate for the lost Business Rates income.

The comparison to Baseline is therefore now based on Business Rates income plus Business Rates Compensation Grants.

CDC Figures

| | 2013/14 Actual £'000 | 2014/15 Actual £'000 | 2015/16 Estimate £'000 |
|------------------------------------|--|--|--|
| Bus Rates Income | 7,496 | 7,818 | 8,456 |
| Bus Rates Compensation Grants | 268 | 446 | 632 |
| Tariff | (6,603) | (6,732) | (6,861) |
| Total Before Safety Net / Levy (A) | 1,161 | 1,532 | 2,227 |
| Baseline | 1,305 | 1,330 | 1,355 |
| Safety Net Payment / (Levy) B | 46 Income is <u>below</u> baseline so get a safety net payment | (101) Income is <u>above</u> baseline so pay 50% levy | (436) Income is <u>above</u> baseline so pay 50% levy |
| Retained NDR Income (A+B) | 1,207 | 1,431 | 1,791 |

Draft Inter Authority Agreement for Pooling of Business Rates

Buckinghamshire Rates Pool

This Agreement is made between: XXX Councils

1. Purpose

1.1 It is the intention of the Pool Members to improve the well-being of the communities they serve. By working together they can retain a greater proportion of any business rate growth within the Pool area for the benefit of residents and businesses.,

2. Key Principles

2.1 The Pool Members agree that they will operate the Pool in accordance with the following principles:

Increase in Resources

The Pool Members recognise that the fundamental objective of the Pool is to generate increased BRRS income for Pool Members.

Fairness

The Pool Members agree to share the costs, risks and benefits of local business rate retention. Pool Members should be no worse off than if they were outside the Pool subject to meeting any Safety Net commitments across the Pool should they arise.

Information sharing

Pool Members will make available all information and analysis required by the Lead Authority to administer the Pool. This also includes sharing data and intelligence outside of the formal reporting mechanisms on any substantive issues relating to business rate retention within their area including the award of any discretionary reliefs.

Reasonableness of Decision-Making

Pool Members agree that all decisions made in relation to this Agreement shall be made by them acting reasonably and in good faith.

3. Buckinghamshire Business Rates Pool Board

3.1 The governing Board for the pool will consist of the S151 Officers, or their nominated deputies from each authority within the pool. The Board will meet at least twice a year, but a meeting can be called at any time by mutual agreement. The board will meet to:

- Agree a schedule of payments;
- Receive an initial forecast of financial benefits arising from the completion of NNDR1 by each member authority;

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- To discuss any statutory requirements and to either re-affirm membership of the pool for the following financial year, or to agree to dissolve the pool;
- To determine the Lead Authority for the following financial year and agree any changes required to these governance arrangements;
- To receive in year and end of year monitoring statements;
- To discuss matters arising.

4. Status of the Agreement

4.1 This Agreement is legally binding.

4.2 Pool Members have approved this Agreement in advance of the Secretary of State designating the Pool for the purposes of the Business Rates Retention Scheme. If the Secretary of State adds conditions to the designation, either initially or at any point in the future an immediate review of this Agreement, as outlined in Section 3, will be triggered.

5. Term of Agreement

5.1 This Agreement shall continue to be in place unless terminated in accordance with these terms.

5.2 This Agreement is subject to a further financial review after publication of the Draft Local Government Finance Report. Any decision not to proceed by an individual member must be made to DCLG within 28 calendar days of the publication of the Draft Local Government Finance Report. This will automatically dissolve the pool. In advance of any Pool Member notifying DCLG of their withdrawal they must give notice to the other Pool Members within 21 days of publication of the Draft Local Government Finance Report.

5.3 Any Pool Member can leave the Pool from 1 April of the following financial year providing:

5.4 Written notice is given to other Pool Members and DCLG in at least sufficient time for the Pool to remain in place for the remaining Pool Members, should they wish it to continue. Sufficient time is taken to be at least 2 months in advance of the deadlines for renewals / applications specified by DCLG in regulations and/or guidance and no later than 31 August, whichever is the earlier.

5.5 All liabilities to and from the Pool are paid.

6. Administration of the Pool

6.1 In advance of each financial year the Pool Board will determine a Lead Authority for the Pool. In addition each authority will nominate a lead officer for administration purposes. The lead officer of the Lead Authority will act as the point of contact with central government on behalf of the pool.

6.2 The Lead Authority will maintain proper accounting records for the pool and produce a final statement in a timely manner to allow member authorities to reflect any relevant amounts and issues in their own statement of accounts. In addition interim statements will be shared with all member authorities on a quarterly basis.

6.3 The Lead Authority shall arrange and provide administrative support to the Pool Board meetings. Any reasonable additional costs incurred by the Lead Authority in the provision of this

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function will be reimbursed by Pool members in proportion to their potential gains provided that these costs have been agreed in advance.

6.4 XXX Council will act as the Lead Authority for the Buckinghamshire Business Rates Pool.

6.5 The responsibilities of the Lead Authority are:

- With reference to Schedule 1 to make payments on behalf of the Pool to central government and Pool Members on time and in accordance with the schedule of payments;
- To liaise with and complete all formal Pool returns to central government on behalf of Pool Members;
- To keep Pool Members informed of all communications with central government,
- To manage the resources of the Pool in accordance with this Agreement;
- To prepare quarterly monitoring reports and consolidate intelligence on future resource levels on behalf of the Pool;
- To prepare the annual report of the Pool's activity;
- To co-ordinate the annual review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources;
- To secure the completion of any legal agreements, accounting and audit arrangements required to support the operation of the Pool;
- With reference to Schedule 1 to consult on and administer the schedule of payments between Pool Members in respect of all financial transactions that form part of the Pool's resources;
- With reference to Schedule 1 to lead on the timely provision of the information required by Pool Members, in preparing their annual Statement of Accounts in relation to the activities and resources of the Pool; and
- To administer the continuation or the dissolution of the Pool in future years.

6.6 To assist the Lead Authority in fulfilling this role, the responsibilities of individual Pool Members are:

- With reference to Schedule 1 to make payments to the Pool on time and in accordance with the schedule of payments;
- With reference to Schedule 1 to provide accurate, timely information to the Lead Authority to enable all formal Pool returns to central government to be completed;
- To inform the Lead Authority, as soon as is practical, of any intelligence that may impact on the resources of the Pool either in the current year or in future years;
- To provide such information as the Section 151 Officers agree is reasonable and necessary to monitor/forecast the Pool's resources within the timescales agreed;
- To provide such information as the Section 151 Officers agree is reasonable and necessary on the use of the Pool's resources for inclusion in the Pool's annual report; and
- With reference to Schedule 1 to provide accurate and timely information on the end of year financial performance of the business rates collection fund to enable the Lead Authority to calculate the end of year accounting entries needed.

7. Unforeseen circumstances

7.1 As these arrangements are new it is plausible that circumstances arise that have not been fully thought through. Where such situations arise these matters will be considered by the pool board and additional arrangements agreed bearing in mind the over-arching principles set out at the head of this document. Unless there is legal constraint otherwise, such new arrangements may be applied retrospectively, if agreed by the board.

8. Dispute Resolution

8.1 The Pool Members shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this Agreement. If this cannot be resolved by the Section 151 Officers it will be referred to a meeting of all Member Authorities' Heads of Paid Service for resolution. If no resolution results, then an independent mediator will be appointed by a majority vote of the Pool Members. The decision of the appointed mediator will be binding on all Pool members save in the case of manifest error or on a point of law.

9. Cash Management

9.1 The governing principle for the cash management of the Pool is that no individual Pool Member, including the Lead Authority, should incur a treasury management gain or loss as a result of the transfer of funds between Pool Members.

9.2 The Financial Protocol sets out the practical application of cash management principles to meet this principle.

9.3 Any funds held by the Lead Authority on behalf of the Pool will attract interest at the LIBOR 7 day rate applicable at the time if held for more than 5 working days (If triggered interest will apply to all days the funds are held including the initial 5 day period).

9.4 Where the pool owes funds to central government these will be paid over by the lead authority in a timely manner. Where the lead authority fails to do this and there are financial consequences (fines, interest payments, etc.) such costs will be borne by the lead authority, not the pool in the first instance. If the lead authority feels that there were particular circumstances beyond its control which led to the additional costs it may apply to the pool board to charge such costs to the pool. The board will not withhold such permission unreasonably.

9.5 Where funds owed by the pool are to come from authorities other than the lead authority such funds will be transferred to the lead authority no later than 4 working days in advance of the due date for the pool payment. Where failure to do this results in financial consequences (fines, interest payments, etc.) such costs will be borne by the non-compliant authority. If that authority feels that there were particular circumstances beyond its control which led to the situation it may apply to the pool board to charge such costs to the pool. The board will not withhold such permission unreasonably. In addition to any externally applied costs, failure to meet these requirements will attract an interest penalty chargeable at the LIBOR 7 day rate applicable at the time, which will be applied to the pool. Interest will be chargeable from the time the money was due to the pool/lead authority until such time as it is actually paid.

9.6 Where funds are received from central government the lead authority will ensure that such funds are distributed to member authorities within 4 working days of receipt from central government, in line with the agreed distribution arrangements set out above. If no further distribution is required the funds will be held within the pool and attract interest as set out above. Where the lead authority fails to distribute funds in line with this requirement it shall pay, at its own expense in the first instance, interest at the LIBOR 7 day rate applicable at the time. Interest will be payable from the time the money was due from the pool/lead authority until such time as it is actually paid. If the lead authority feels that there were particular circumstances beyond its control which led to the situation it may apply to the pool board to charge such interest to the pool. The board will not withhold such permission unreasonably.

10. Distribution

10.1 Pool funds will be distributed as follows;

- Gains shall be distributed half to Major Precepting Authorities (excluding TVPCC) and half to the Pooling Districts, to be shared in proportion to their contribution to the overall amount of business rate growth for the year arising from their area.
- If unanimity can be reached by the board, any other distribution agreed can be implemented.

11. Glossary of main technical terms

There are a number of technical terms used throughout this document. The meanings of these terms are as follows:

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| Agreement | Refers to this document and to Schedule 1 (Financial Protocol) |
| Base Rate | The prevailing level of interest rate set by the Bank of England. |
| Baseline Funding | Government's assessment at the outset of BRRS of the income an authority could raise through the BRRS. |
| Business Rates Retention Scheme (BRRS) | The new system of local government funding implemented in April 2013 which provides for the local retention of a proportion of business rates. |
| Gross Retained Levy | The total amount of the levies that would have been paid by individual Pool Members had the pool not existed. |
| Lead Authority | The Pool member who will act as the lead in administering the pool, in particular receiving shares of tariff, paying top-ups and managing the distribution of Gross and Net Retained Levies and Local Volatility Fund. |
| Levy | A payment due to central government related to BRRS income above Baseline Funding levels. Calculated using a nationally set formula. |
| Net Retained Levy | The amount of Levy retained locally. This is calculated as the sum of levies to be paid by individual Pool members if the Pool did not exist less the Levy to be paid by the Pool less any Safety Net funding that would have been due to individual Pool members if the Pool did not exist (and if not able to be supported through the Local Volatility Fund) less the administrative costs of the Pool. |
| NNDR1/NNDR3 | Central government forms used to estimate a future year's business rates prepared on an annual basis by all billing authorities and used as the basis for allocating shares of business rates/year end form for determining final calculations. |

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| Pool | A voluntary arrangement amongst a group of local authorities to pool the business rates generated locally in accordance with the BRRS pooling prospectus published by DCLG in July 2013. |
| Safety Net | Payment received by an authority from central government under the BRRS if BRRS income falls by more than a specified percentage below the Baseline Funding Level. It is calculated using a national formula. |
| Schedule 1 | Refers to the Financial Protocol' that would be attached to this document. |

Agreed on behalf of XXX Council (Each participant in the Pool)

Director of Resources/Chief Finance Officer (Section 151 Officer)

Name:

Signature:

Date: