

LEGAL BACKGROUND TO SETTING THE REVENUE BUDGET AND COUNCIL TAX

1. INTRODUCTION

1.1 The council tax is basically a tax on property with a personal element in the form of discounts and reductions. Discounts include the 25% discount in respect of dwellings occupied by a single person. Reductions include reductions in pursuance of the Council's council tax reduction scheme made under the Local Government Finance Act 2012 which has replaced council tax benefit.

1.2 All dwellings are listed in one of eight valuation bands and the amount of council tax payable in respect of each dwelling (before discounts and other reductions) is in a set proportion between each band. The Headline Tax is calculated for Band D and the tax in the remaining bands is worked out as a proportion of this amount. The lowest Band (A) is two-thirds of Band D and the highest Band (H) is twice Band D and three-times Band A. The proportions are as follows:-

A:	B:	C:	D:	E:	F:	G:	H:
6:	7:	8:	9:	11:	13:	15:	18:

1.3 There are three main stages in setting the council tax:-

STAGE 1 - The Council calculates its own **council tax requirement**, (i.e. its net revenue expenditure), including levies issued to it but not precepts.

STAGE 2 - The Council then calculates its **basic amount of council tax** which is the North Northamptonshire Council (NNC) element of the council tax for Band D and which takes account of council tax requirement and the council tax base calculated at an earlier stage and after that the NNC element of the remaining bands.

STAGE 3 - Finally, the Council sets the council tax for the area in bands, being the aggregate of the NNC element of the tax, the Town and Parish Council Precepts and the element of the tax precepted by the Northamptonshire Police Authority and Northamptonshire Fire and Rescue Authority.

2. STAGE 1 - THE COUNCIL TAX REQUIREMENT

- 2.1 Members should note that the Localism Act 2011 amended the Local Government Finance Act 1992 ("LGFA 2011") to introduce a duty to calculate a "council tax requirement".
- 2.2 Section 31A of the LGFA 1992 requires the Council to make three calculations, in effect -
- a) an estimate of the Council's gross revenue expenditure - Section 31A(2);
 - b) an estimate of anticipated income - Section 31A(3);
 - c) a calculation of the difference between (i) and (ii) above, (i.e. net revenue expenditure) - Section 31A(4) – this is known as the **council tax requirement**.
- 2.3 More specifically, in its Section 31A(2) calculation of gross expenditure the Council should include –
- a) being the aggregate of the amounts which the Council estimates for the items set out in Section 31A (2) (a) to (f) of the Act taking into account all precepts issued to it by Parish Councils. (Gross expenditure, parish expenses any contingencies, any provision for reserves).
- 2.4 The Section 31A(3) calculation is the aggregate of the sums to be set off against gross expenditure, namely -
- a) being the aggregate of the amounts which the Council estimates for the items set out in Section 31 (A) (3) (a) to (d) of the Act. (Gross income, any use of reserves).
- 2.5 Section 31A(4) then requires the calculation under Section 31A(3) to be subtracted from that under Section 31A(2) to produce a calculation of estimated net expenditure known as the **council tax requirement**.
- 2.6 These calculations must be made before 11 March, although they are not invalid merely because they are made on or after that date. However, until the calculations are made any purported setting of the Council Tax will be treated as null and void.
- 2.7 It should be noted that the general fund has to stand the cost of any temporary lending to the collection fund to cover late payments/non-collection.
- 2.8 It should be noted that significant amounts of expenditure are financed through government grants (such as the Dedicated Schools Grant for schools budget related expenditure) and not directly through council tax. Such expenditure will be calculated under Section 31A(2)(a) and will be offset by the specific grants which will be included in the calculation under Section 31A(3)(a).

3. THE LEVEL OF THE COUNCIL TAX REQUIREMENT

3.1 The level of the Section 31A calculations, and in particular the calculation of the council tax requirement is of crucial importance both legally and financially. In particular -

- the amount of the council tax requirement must be sufficient to meet the Council's legal and financial commitments and ensure the proper discharge of its statutory duties.
- the amount of the council tax requirement must ensure a balanced budget.
- the amount of the council tax requirement must leave the Council with adequate financial reserves.
- the level of the council tax requirement must not be unreasonable having regard to the Council's fiduciary duty to its Council Taxpayers and ratepayers.
- the amount of the council tax requirement will be relevant to the question of whether or not the Council is required to hold a council tax referendum (see paragraph 5).

3.2 The level of the council tax requirement, together with the council tax base (see paragraph 4.3) will determine the Council's basic amount of council tax.

4. STAGE 2 - THE COUNCIL'S BASIC AMOUNT OF COUNCIL TAX

4.1 Having calculated its council tax requirement, the Council is then required under Section 31B, LGFA 1992 to calculate its **basic amount of council tax**. This is North Northamptonshire Council's element of Band D Council Tax. Then, under Section 36, it must calculate the North Northamptonshire element of all the bands as a proportion of the Band D calculation.

4.2 Section 31B Calculation

The North Northamptonshire Element of the Band D Council Tax is known as the basic amount of council tax. This is calculated by applying the following formula -

$$\frac{R}{T}$$

where -

R is the council tax requirement, and

T is the council tax base.

4.3 **Council Tax Base**

The council tax base is basically the Band D - equivalent number of properties across North Northamptonshire adjusted to take account of discounts premiums and reductions and multiplied by the estimated collection rate. North Northamptonshire has calculated the council tax base for 2022/23 to be 113,047. It should be noted that the basis of calculations has changed as a result of localisation of council tax support and that the effect of the authority's council tax reduction scheme operates to reduce council tax base.

4.4 **Section 36 Calculation**

Having calculated the basic amount of council tax (i.e. the North Northamptonshire element of the Band D tax) the Council is then required to convert it into a North Northamptonshire element for all Bands by multiplying it by the formula N/D where -

N is the proportion for the band as set out in 1.2

5. **COUNCIL TAX REFERENDUM**

- 5.1 The Localism Act 2011 ("LA 2011") abolished council tax capping and replaced it with a requirement to hold a council tax referendum if an authority increases its council tax by an amount exceeding a level set out in principles determined by the Secretary of State and approved by the House of Commons. The new requirement appears in Chapter 4ZA of Part 1 of the LGFA 1992 which was inserted by Schedule 5 of the LA 2011.
- 5.2 The provisions require the Council to determine whether its "basic amount of council tax" for a financial year is excessive. This question must be decided in accordance with a set of principles determined by the Secretary of State. The Secretary of State had indicated the principles he was minded to set. In relation to North Northamptonshire an increase of more than 2.99%, (including 1% for adult social care) is deemed "excessive" in 2022/23.
- 5.3 The legislation places the onus on each authority to determine whether its basic amount of council tax is excessive by reference to the Secretary of State's principles. Where a precepting authority has determined that its increase is excessive, it must arrange for a referendum to be held.
- 5.4 If an authority determines that it has set an excessive increase, it must also make "substitute calculations" to produce a basic amount of council tax which does not exceed the principles. The substitute calculations would automatically take effect in the event that the voters reject the authority's increase in a referendum. The costs of this referendum are the responsibility of the authority which triggered it.

6. STAGE 3 - SETTING THE COUNCIL TAX

- 6.1 The final part of the process is for the Council as billing authority to set the overall council tax for each band. Whereas the billing authorities and major precepting authorities **calculate** their own council tax requirements, their own basic amounts of council tax and amounts for each band, the **setting** of the council tax is solely the responsibility of the Council as billing authority.
- 6.2 Section 30 of the 1992 Act provides that the amounts set for each band will be the aggregate of the Council's element for each band calculated under Section 36 and the amount calculated for each band by each of the major precepting authorities.
- 6.4 The council tax cannot be set before 11 March unless all precepting authorities have issued their precepts; nor can it be set before the Council has made the other required calculations. Otherwise, any purported setting of the tax will be treated as not having occurred.
- 6.5 The Council has a clear legal duty to set a council tax and a resolution not to set a council tax would be unlawful, being in breach of Section 30, LGFA 1992. So would be a resolution to set a council tax which deliberately did not balance the various calculations.

7. CONSTITUTIONAL ARRANGEMENTS

- 7.1 Members should note that under the Council's constitutional arrangements, the functions of calculating the council tax requirement and the basic amount of council tax and the function of setting the council tax are the responsibility of Council.

8. RESTRICTIONS ON VOTING

- 8.1 Members should be aware of the provisions of Section 106 of the Local Government Finance Act 1992, which applies to members where -
- (a) they are present at a meeting of the Council, Executive or a Committee and at the time of the meeting an amount of council tax is payable by them and has remained unpaid for at least two months, and
 - (b) any budget or council tax calculation, or recommendation or decision which might affect the making of any such calculation, is the subject of consideration at the meeting.
- 8.2 In these circumstances, any such members shall at the meeting and as soon as practicable after its commencement disclose the fact that Section 106 applies to them and shall not vote on any question concerning the matter in 8.1 (b) above. It should be noted that such members are not debarred from speaking on these matters.

8.3 Failure to comply with these requirements constitutes a criminal offence, unless any such members can prove they did not know that Section 106 applied to them at the time of the meeting or that the matter in question was the subject of consideration at the meeting.