

Empty rates: coming or going?

The rating of property in England and Wales has long given rise to strife and discontent. Quite apart from the turmoil caused by the changes to the basis upon which householder liability was calculated in the 1980s, the revisions to the system for calculating business rates at that time caused rumblings in the business community which continue today. James Snaith, partner at Paris Smith LLP writes

In recent years the hot topic has been "empty rates"; that is to say the rating of unoccupied business property. Following the changes to the rating system in the late 1980s, vacant business properties were liable to pay the full occupied rate at 50% of the rate for occupied premises, albeit after a three month "holiday period". Certain types of property were exempt from the empty rate altogether, namely vacant industrial buildings (which include manufacturing and storage premises). This all changed in 2008 when the Rating (Empty Properties) Act 2007 came into effect. Vacant business properties became liable to the full rate and the exemption for industrial properties was removed (although these types of property are entitled to a more generous holiday period of 6 months).

Given that unoccupied properties are unlikely to give rise to a significant drain on the resources of local authorities, it is hardly surprising that the 2007 legislation caused unrest in the business community. A visit to the website "Empty Rates", a campaign against the impost apparently supported by, amongst others, the British Property Federation, highlights quotations from such luminaries as Michael Gove: "Empty Rates: A wicked and ungodly act" (October 2009) and Eric Pickles: "Empty rates will stifle what hope there is for economic recovery".

It is perhaps not surprising that interest in schemes for mitigating the effect of empty rates has been renewed. At the time that the comments referred to above were made, the last government appeared to be concentrating on tightening, rather than relaxing the legislation: the 2007 Act itself contains provisions capable of being introduced by regulation to block the well known tactic of "taking the roof off" vacant premises in order to remove them from rating. There were indications that the government was proposing to obstruct the device used by landlords of installing short term tenants in vacant premises for a short period of six weeks in order to "re-start" the three (or six) month grace period.

The proposals for clamping down on mitigation measures appear to have been thrown off course by events given the current government's preoccupation with the budget deficit and it is to be wondered whether the declarations of opposition to empty rates made prior to the election will be acted upon. Perhaps things are happening behind the scenes although in a world where tax cuts are not currently on the cards it is just as likely that the status quo will be preserved for the time being.

In the meantime businesses and landlords should continue to review the options open to them and make the most of opportunities to minimise their rate bills especially empty rates bills. In this regard:

- If a business or a landlord has vacant space it should consider making that available at reduced rents and possibly at nil rates to charities in order to minimise the empty rates. Care needs to be taken that the lease excludes the security of tenure provisions contained in the Landlord & Tenant Act 1954 and specialist drafting will be required. Note that, if part of the premises are being let, steps may need to be taken to have that part separately rated in order to secure the relief (although only a small part of the larger space may need to be occupied). The area occupied by the tenant will need to be moved around if the "re-triggering" of the rating "holiday period" is to be achieved. The longer six-month rate holiday may be utilised in appropriate circumstances where the vacant premises are used for storage. All of this needs careful planning.
- Whilst the non payment of rent by a tenant in difficulty may be an unhappy circumstance for a landlord, things could be worse. It may be better to have even an insolvent tenant in place rather than no tenant at all (note that a company in liquidation is not liable for rates and similar relief is available for other types of financial distress) in order to avoid the



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empty rates. If, however, a payment of rent is to be effectively waived, the landlord's rights against the tenant to secure vacant possession, when a better tenant comes along, need to be carefully managed and documented.

- If a building is being brought into use for the first time, but no occupier has yet been identified, it may be possible to postpone the impact of empty rates by managing the completion process carefully.
- Extreme measures involving "decommissioning" of buildings to make them unoccupiable have a long and venerable history but can only realistically be considered in circumstances which genuinely lend themselves to such measures.

If any of the above measures are considered, specialist advice should be sought. It is also worth noting that, unlike the council tax which is collected and utilised directly by local authorities, business rates are collected by local authorities and then paid on to central government. Accordingly the considerations applied by local authorities when considering the effect of the impost may be different from those which are relevant to them when reviewing their arrangements for collection of council tax.

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