



Empty Property Rates Relief

The 2007 Budget saw the Government announce its intention to reform empty property rates relief. Its aspirations will soon become reality as The Rating (Empty Properties) Act 2007 received Royal Assent on 19 July. Under the current regime vacant industrial property enjoys unqualified relief from any liability to pay rates, whilst other forms of commercial property enjoy 100% relief for the first three months of vacancy, tapering to 50% relief after three months. The new Act will introduce a cap to the 100% empty property relief enjoyed by industrial property by restricting relief to a period of six months. Other forms of commercial property will have their empty property relief restricted to a period of three months by the abolition of the period of tailored liability at 50%.

Since their announcement these reforms have been met with vociferous opposition by the property industry, sceptical that the Government's true motive is to raise more tax, rather than its stated desire to ensure empty properties are put to good use in preference to being left vacant. Nevertheless, the changes are scheduled for implementation from 1 April 2008, and the Government is now seeking views on the detail of the reforms, having published a consultation paper, Modernising Empty Property Relief.

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The Consultation Questions

Listed Buildings

Some classes of property, such as places of religious worship, agricultural buildings and buildings used by disabled people are exempt from rates irrespective of whether they are occupied or empty. Other classes are exempt only whilst they remain empty. This latter category includes listed buildings, which, when occupied, are liable for occupied business rates in the usual way. The evidence that there are greater risks associated with owning and developing listed buildings so as to justify a tax advantage when vacant over unlisted property is mixed, and there is a large body of evidence which supports the proposition that listed buildings are more likely to be well maintained when in use. The three options under consideration therefore are:

- Maintain the permanent exemption listed buildings enjoy when unoccupied, on the grounds the evidence supports a tax advantage over other property;

- If one accepts that the tax advantage is unjustified because there is no real distinction in terms of ownership risk between owning listed and unlisted properties, give listed buildings an initial exemption of six months empty property rates relief to cushion the introduction of such a major change as the abolition of the relief;
- Treat listed commercial buildings in the same way as unprotected commercial property so as to remove unwarranted distortions in the treatment of different types of property.

Companies in Administration

The main avoidance tactic to be targeted is that of allowing an empty property to deteriorate to such a poor condition that it becomes incapable of economic repair and so is removed from the rating list.

Insolvent companies in liquidation are another category that enjoy unlimited exemption from paying rates in respect of empty commercial property. Changes in insolvency practice to encourage rescue operations wherever viable has meant a sizeable shift away from companies going in to liquidation in favour of entering into administration, where there is currently no empty property rates exemption. The Government is therefore consulting upon the following three options:

- Companies in administration should continue to pay empty property rates. Although this would maintain the differential with companies that go into liquidation, companies in administration are typically still operating and so, the argument runs, should be treated in the same way as their competitors;
- Give companies in administration an exemption of 12 months empty rate relief to covers the initial period of the administration (fixed at 12 months) so that initial decisions as to which insolvency regime to enter are not influenced inappropriately by the issue of empty property rates, albeit that this could distort the decision taken after 12 months as to whether to continue with rescue efforts;
- Treat companies in administration in the same way as companies in liquidation by making them permanently exempt from empty property rates.

Avoidance tactics

The main avoidance tactic to be targeted is that of allowing an empty property to deteriorate to such a poor condition that it becomes incapable of economic repair and so is removed from the rating list. This is obviously an extreme measure, but there is concern that the intended changes to empty property rates will increase the number of property owners who act in this way. To counteract this it is proposed to set out circumstances where the condition of a property will be deemed not to have changed and to extend the valuation officers' existing obligation to disregard the condition of a property where repair is economically feasible. The challenge is to ensure a satisfactory distinction is made between changes that should be treated as avoidance activity and changes that are beyond the owner's control or a part of normal business activity, such as redevelopment work.

If the anti-avoidance provisions apply, the valuation officer will have to value the property as if it were in a particular condition on a particular date. The valuation given will then apply for a prescribed period, set long enough to act as a deterrent, after which the rating entry will revert to the actual state of the property. The consultation seeks views on what the valuation date ought to be:

- The date of last occupation;
- The date of the last valuation, so that owners cannot avoid rates by allowing deterioration before occupation ceases;
- The date before the date that the avoidance activity took place, which would clearly be the most complicated to operate.

Views are also sought on the length of the anti-avoidance period, one year, two years, three years or an indefinite period, and what should happen on a sale or re-occupation of the property.

The Government is aware of other avoidance practices, such as failing to complete a development, bogus lettings to exempt organisations and intermittent lettings. It is currently trying to establish how widespread use of these practices is before developing any strategies to deal with them.

Responses

The deadline for responses to the Consultation is 1 October 2007. The full text is available on the website of the Department for Communities and Local Government.

Mayer, Brown, Rowe & Maw LLP advise Hampton Brook Estates



Iain Roberts

Mayer, Brown, Rowe & Maw LLP's London real estate group has advised new client Hampton Brook Estates on its latest office development in Milton Keynes comprising over 200,000 square feet. Ian Jackson, a director at Hampton Brook Estates, said *"This is the biggest single office development in Milton Keynes for over 25 years and promises to be a world class development. Given the significance of the transaction for both our business and Milton Keynes, we thought it appropriate to bring in Mayer, Brown, Rowe & Maw at an early stage given their expertise in this area and we have been delighted with the result."*

The transaction involved six different parties including English Partnerships, Barclay's Nominees, Kier, Deloitte & Touche and Denton Wilde Sapte LLP (the latter two taking prelets at the site).

London real estate partner James Dodsworth led the Mayer, Brown, Rowe & Maw team advising Hampton Brook Estates, with support from senior assistant Iain Roberts and construction partner John Rushton and assistant Stephen Natoli.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Suzanne Dray (sdray@mayerbrownrowe.com), Charles Leach (cleach@mayerbrownrowe.com) or your regular contact in the Real Estate Group.

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