

Property Focus Update

Changes to Business Rates and Empty Property Relief

What are Business Rates?

Business rates are a charge on commercial property and there are different rules governing industrial premises (such as factories and warehouses) and other commercial buildings (such as offices and shops).

The position until the 1 April 2008 was that industrial premises were exempt from business rates when the property was empty ('Empty Rates') but the owners of other empty commercial buildings were liable for mandatory payment of rates at 50% of the basic rate after an initial three month period of vacation.

Who pays them?

Empty Rates are paid by the 'owner' of the property. An 'owner' of a property is defined as the person or body entitled to occupation, therefore this could be the freeholder or the tenant. There are exemptions for properties held by charities and community amateur sports clubs provided the property is also used by the charity or club for qualifying purposes.

Rateable Value of Property

The rateable value of property is based on the amount of annual rent reasonably obtainable for the property on the assumption that before the tenancy commences, the hypothetical landlord has put the property into repair where it is economically reasonable to do so.

The Act and Regulations

Following the Rating (Empty Properties) Act 2007 (the 'Act') which came into force on 1 April 2008 and the regulations giving effect to the Act the exemption from Empty Rates in respect of industrial premises in England and Wales no longer applies.

The Non-Domestic (Unoccupied Property) (England) Regulations 2008 ("the Regulations") provide that the following types of empty non-domestic property are exempt from rates (either indefinitely or for a fixed period):

- Retail property – 100% relief for continuous period of 3 months only.
- Industrial and warehouse property – 100% relief for continuous period of 6 months only.

- Properties whose owner is prohibited by law from occupying it or allowing it to be occupied.
- Properties that cannot be occupied due to action of a public authority.
- Listed properties.
- Empty properties with a rateable value below £2,600.
- Until 31 March 2014 – small business with a rateable value of less than £18,000 get a discount of up to 50% on rates.
- Empty properties whose owner is entitled to possession in his capacity as a personal representative.
- Empty properties owned by a person entitled to possession in his capacity as a trustee under a Deed of Arrangement.
- Empty properties owned by individuals subject to a Bankruptcy Order.
- Empty properties owned by a company subject to a winding up order.
- Empty properties owned by a company in administration.

Where properties are part occupied a Valuation Officer will be required to apportion the properties rateable value between its occupied and unoccupied parts. The Empty Rates will apply to the empty parts of the building.

Anti Avoidance

The Government has consulted with interested parties on secondary legislation in this area and primarily on the issue of 'anti avoidance' legislation. The Government is concerned that property may be intentionally damaged for the purposes of avoiding rates. For the time being these proposals have been put on hold but this is likely to be reviewed if owners habitually use strip out works as an avoidance device.

Proposal to exempt new-build Commercial Property

The government is consulting on how to exempt from empty property rates all empty newly-built commercial property built between 1 October 2013 and 30 September 2016. This will apply for the first 18 months following completion. This proposal was promised by the Chancellor in the December 2012 autumn statement.

Measures to minimise business rates liability on empty property

- If the property is re-occupied for a minimum of 6 weeks, this allows the owner to claim a further period of exemption.
- Delay completion of works at the property until tenants/purchasers are identified. This only applies for 3 months though.
- If a property becomes incapable of beneficial occupation the Valuation Office can remove the property from the rating list.
- Where there is no demand for the property, it will command no annual rent and can be removed from the rating list.

Conclusion

Owners and tenants of unoccupied commercial property should be aware that the amount of relief given has now been significantly reduced as a result of the Act. After an initial 3 month exemption period for shops and offices and a six month exemption period for industrial premises the full amount of the business rate will now be payable. The new legislation encourages owners and tenants to try and keep their premises occupied!

For further guidance on the charging of business rates and the remaining exemptions please contact one of our Commercial Property Solicitors.