

Insights

EMPTY PROPERTY RATES IN ENGLAND; HOW CAN A BUSINESS MITIGATE ITS LIABILITY?

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A tax in the limelight

Empty property rates is a tax in the limelight. For the government, it is easy money. Rates are simple to collect and an efficient source of revenue. However, for owners and occupiers of business premises in England a tax equal to about half of the rental value feels punitive. It is bad enough if the premises are being used profitably. If the premises are unoccupied, the ratepayer will experience real pain. The impact of the pandemic-related reliefs for some types of property are temporary measures. There is nothing temporary about the impact of empty property rates, pandemic or no pandemic. It is unsurprising that in the debates about the reform of rating, including the current “fundamental review” by HM Treasury, empty rates attracts much comment.

Nor is it any wonder that affected ratepayers look to mitigate their liabilities. The devolved administrations of the UK are developing their own rules to restrict the mitigation of empty rates. This note provides comments for England.

Yes, you can

In England, the answer is “yes” you can mitigate using a variety of techniques. This note considers the use of premises for storage.

Empty rates in more detail

The liability to pay rates accrues day by day. The owner of an empty commercial property has a period of three months to find an occupier, without having to pay rates as a non-occupier owner. Once the new occupier moves in, it becomes rateable as occupier and the owner is non-rateable for the property because the liability to pay falls on the occupier day by day.

To benefit the owner, the occupation must last for at least six weeks; if it lasts less than six weeks, the period does not count as an interruption to the emptiness of the property and the owner becomes rateable as a non-occupier at the end of the period of occupation. If the occupation lasts six weeks or more, when it ends the owner will have a further three month period of non-rateability in which to find another (or the same) tenant occupier.

Thus, an owner may seek to avoid rates liability by arranging a series of "six weeks plus" occupations by a tenant, provided not more than three months elapse from the end of one such occupation to the start of the next.

If it turns out that the new "occupier" is not in "occupation", the old occupier is liable as a non-occupier. If the new occupier has become the rateable occupier, the old occupier escapes liability for as long as it adheres to the three month and six week thresholds.

Therefore, if six weeks of storage use is beneficial occupation, the owner receives a new three month holiday from empty rates. At the end of the holiday, another six weeks of storage use would lead to the next three-month holiday. A sequence of 3 holidays and 2 chargeable periods would leave the ratepayer having to pay only about 25% of the rates that would be payable if the premises were rateably occupied throughout.

Pile it high?

How does this technique work in practice? There are providers of services who offer to manage empty space as effectively as possible by using those premises for the purpose of short-term storage. One example of a deal on offer is that the provider takes a 6 month lease from the ratepayer at a nominal rent. The provider covenants to pay and indemnify the ratepayer against all business rates charged on the property during the term of the lease. The ratepayer remains responsible for paying utility bills. The provider must keep the property clean and in good repair, fair wear and tear excepted. The ratepayer is entitled to access on prior written notice and must not assign or sublet.

Separately there are terms and conditions which stipulate that the cost of the provider's service is a percentage of the rates saving achieved.

What the provider then does is to arrange for storage of items in the premises, thereby occupying the premises.

The amount of space taken up by storage must be more than trivial. However, the premises do not have to be piled high for there to be rateable occupation.

Beneficial occupation?

In order for the technique to work, the storage occupation must be rateable occupation. In order to be rateable occupation, the occupation must be beneficial occupation.

The storage use does not have to be profitable but it must be of some value or benefit to the possessor. Storage use in the context of the arrangements summarised above has been held to be beneficial.

That assumes that the items stored are not abandoned debris of no value and not worth moving. Documents that are of consequence perhaps because they have to be retained for legal reasons would qualify as would stock or other items of value.

Anti -avoidance

Currently, the courts do not consider that avoidance or mitigation schemes are contrary to the public interest.

Of all the techniques available, storage seems the least aggressive and the simplest to implement. Care must be taken to select a service provider whose offering delivers rateable occupation. As ever, always check the terms and conditions of any particular product.

What next?

HM Treasury is pondering the evidence submitted for its fundamental review.

It might decide to cut the rate of empty rates but introduce an anti-avoidance stipulation.

This insight was originally authored by Roger Cohen.

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