

# Introduction to non-domestic rates

**Dan Kolinsky QC**

## History of rates (in 4 stages)



Stage 1 – 1601-1966 – incremental development of local tax centred on the occupation of property

Stage 2 – General Rate Act 1967 –consolidation masterpiece described in Ryde on Rating (13<sup>th</sup> edition; 1976) :

“it consolidates practically the whole of statute law on rating in force at the date it was enacted, bringing into a single statute more than thirty statutes from the Poor Relief Act 1601 to the Local Government Act 1966”.

## Introduction to rates (in 4 stages)



- Stage 3 - The Tearing up of the consolidation masterpiece (aka – The Local Government Finance Act 1988)
  - abolition of the local authority's role in setting the rate applicable to non-domestic property and its replacement with a uniform business rate set by the Secretary of State.
  - rating legislation was re-written in a way which conferred broad enabling powers on central government.

# History of rates (in 4 stages)

## LGFA 1988 – basic structure



rating lists every 5 years (1990 onwards but 2010 list extended to 7)

Section 41 – VO duty to compile and maintain rating list

Section 43 liability for occupied hereditaments (imposed on rateable occupier)

Section 45 liability in respect of unoccupied hereditaments shown in rating list (imposed on owner – i.e. person entitled to possession)

NB- daily rate –one right answer for each day

Section 55 – enabling provision for proposals to alter the rating list

(NB – collection and enforcement of rates is the job of billing authority; it proceeds on the basis that the list is correct and cannot be challenged – see reg 23 of NDR (C&E) (LL) Regs 1989/1058)

# History of rates in 4 stages

## Stage 4 – the gathering (perfect) storm



- Stage 4 –inadequate legislative framework strained by:-
  - Full rates payable on unoccupied rates Rating (Empty Properties) Act 2007 (subject to exemption provisions in 2008/386 Regs)
  - Increasing financial incentive for local authorities to participate in the system (rates retention) (LGFA 2012)
  - Turbulent economic conditions so rateable value determined by reference to (and locked into) different economic conditions (exacerbated by extension of 2010 rating list by 2 years to 2017)
  - Appeal system at valuation tribunal under strain
  - process for making alterations to rating list (now) subject of controversial reform

## Introduction to rates – judicial approach



**“The law of rating is statutory and ancient, going back even before the Poor Relief Act 1601. .... the body of statute law has shown extraordinary stability..... This slow and steady process of evolution means that there is a large volume of case law, some of it quite old, which is still relevant to the understanding of the principles underlying the modern law”**

Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd  
Allied Domecq Retailing Ltd [2001] R.A. 41; Robert Walker LJ at paragraph 17

## Introduction to rates – judicial approach (2)



**“weighty volume of judge-made law which underlies the modern legislation.....**

[body] of law which, although in principle wholly statutory, owe[s] much to judicial activity in building on fairly primitive statutory foundations, and (to alter the metaphor) still carry the “intellectual freight which was carried by words or phrases in earlier ... legislation” ..... in rating.. it is necessary to pay close attention to the way in which successive generations of judges have interpreted and applied the hallowed language of the statute ..... However respect for ‘intellectual freight’ from earlier centuries must not be carried too far.”.

Robert Walker LJ in Scottish & Newcastle [2001] R.A. 41 at paragraphs 54-56:

## Key Concepts



# the hereditament



Hereditament under LGFA 1988

Section 64(1) provides that:

“A hereditament is anything, which by virtue of the definition in section 115(1) of the 1967 Act, would have been a hereditament for the purposes of the Act had this Act not been passed”.

Section 115 of the 1967 Act “hereditament” means property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list”

## Judicial Observations on s.115 of the GRA 1967



Sedley LJ in Vtesse Networks Ltd v Bradford (VO) [2006] EWCA Civ 1339 at paragraph 40:

“The key to the apparently circular definition given by s.115(1) of the General Rate Act 1967 , which defines a hereditament by its liability to rating, is that it assumes and relies on an existing fund of knowledge of what is and is not capable of being shown as a separate item in the valuation list”.

## Supreme Court in Woolway

Lord Sumption at [12]

1. Primary test geographical – “visual or cartographical unity”
2. Functional test may enable two geographical distinct spaces to be treated as one but must be “where the use of one is necessary to the effectual enjoyment of the other”
3. Whether necessary depends not on the business needs but the “objectively ascertainable character of the subjects”

## Rateable value

- Prescribed assumptions for valuation set out in ss.56 and schedule 6 of the LGFA 1988
  - Rent vacant and to let (hypothetical tenancy from year to year with reasonable prospect of continuance)
  - Three assumptions in para 2(1)
  - Economic conditions at AVD
  - Physical conditions at material day
  - Value *rebus sic stantibus* (as it stands and in same mode and category of occupation)
  - Take account of “essential”; disregard “accidental”  
(Dawkins (VO) v Ash Brothers and Heaton Ltd [1969] 2 AC 336)

## Methods of valuation

- Rental valuation based on comparable evidence
- Comparable settlements (is there a tone of the list?)
- Receipts and expenditure (R&E)
- Contractors' basis (CB) – must use prescribed decap rate (at stage 4)

## Rates payable



- RV x multiplier
- Adjust for transitional relief
- Also apply any reliefs or exemptions

# Exemptions



From occupied rates:

- Schedule 5 contains extensive provisions carried over from the past (so continuing relevance of caselaw) relating to:
  - Agricultural land and buildings
  - Fish farming
  - Place of public religious worship (must be public – see Gallagher (VO) v Church of Jesus Christ of Latter-day Saints [2008] 1 W.L.R. 1852) and related religious exemptions

## Exemptions (2)

- Trinity House
- Sewers
- Drainage
- Parks
- Property used for disabled persons
- Air-raid protection works
- Road crossings over watercourses
- Properties used for road user charging schemes
- Hereditaments occupied for purposes of visiting armed forces



# Reliefs



- Charitable relief – mandatory (S.43(6) – “wholly or mainly used for charitable purposes”)
  - Note – use must directly facilitate charitable purpose (see Oxfam v Birmingham City Centre [1976] AC 126)
  - Extent of use is relevant – see Kenya Aid Programme v Sheffield City Council [2014] QB 62
- Rural shops with low rateable value
- Small business relief
- Stud farms

## Unoccupied rates

- Rules contained in 2008 Regulations govern whether or not property is “prescribed hereditament” for purpose of s.45 LGFA 88
  - Unoccupied rate is now 100%
  - 3 months grace (for offices)
  - 6 months grace for industrial properties
  - Period of (rateable) occupation for six weeks triggers fresh period of entitlement

## Unoccupied rates (2)



Six week rule:

leads to the “reversal of usual roles” in the argument about whether occupation is taking place - HHJ Jarman in Makro Properties Limited v Nuneaton & Bedworth Borough Council [2012] RA 285 at [4].

Makro creates an open backdoor for rates mitigation strategies

s.66A of LGFA contains power to create a legislative solution to rates mitigation (not yet exercised)

## Unoccupied rates (3)

- other hereditaments that get special treatment
  - Listed buildings or building subject to building preservation notice (reg 4(e) of 2008 Regs) or scheduled monument (reg 4(f) of 2008 Regs)
  - Owner prohibited from occupying - v narrow test – see Pall Mall Investments (London) Ltd v Gloucester City Council [2014] EWHC 2247 (Admin)(reg 4(c) of 2008 Regs)
  - Low value (reg 4(g) of 2008 Regs)
  - Special treatment in certain insolvency situations (regs 4(i)-(m) of 2008 Regs)
  - Owner is charity + property “next in use” wholly or mainly for charitable purposes” (s.45A of LGFA)