

REMEDIES:
how to challenge rating decisions /
how the system works

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Business rates: an overview (I)



- A tax on the occupation of non-domestic property;
- Dates back to the 16th century;
- Modern system contained in Local Government Finance Act 1988;
- Centred around units of occupation: hereditaments;
- Properties are assessed in a rating list with a rateable value: ordinarily a valuation of their annual rental value, on a fixed valuation date using statutory assumptions;

Business rates: an overview (II)

- The liability of the occupier is calculated by multiplying the rateable value by the correct multiplier (set by central Government);
- The multiplier increases yearly by inflation;
- For example, property A has a rateable value of £10,000, with a multiplier of 40p: $£10,000 \times 0.40 = £4,000$;
- Two uniform multipliers: small business and standard;
- City of London can set own multipliers within set limits;

Business rates: an overview (III)

- Rating lists are created and maintained by the Valuation Officer Agency;
- New rating lists are, *ordinarily*, created every 5 years;
- 2015 revaluation postponed to 2017;
- When rateable values are reviewed, the multiplier is also adjusted to limit overall increase across the country to inflation;
- Revision of the list will lead to substantial regional variations (with some transitional reliefs);
- Rate reliefs for small businesses and charities;

Challenging decisions

- Regime for challenging decisions contained in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009;
- Challenges are made by means of a proposal to amend the local list;
- Regulation 4 sets out the circumstances in which a person can apply to the VOA to alter the local list;
- The VOA will consider whether to accept a proposal. If it decides not to alter the list, that decision can be appealed to the Valuation Tribunal;

Types of challenge

- A proposal to alter the local list can be made to the VOA where:
 - the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;
 - the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;
 - the rateable value or any other information shown in the list for a hereditament is shown to be inaccurate by reason of a decision in relation to another hereditament of the VTE; a valuation tribunal; the Lands Tribunal/Upper Tribunal / Court;

Types of challenge cont.



- the day from which an alteration is shown in the list as having effect is wrong;
- a hereditament not shown in the list ought to be shown in that list;
- a hereditament shown in the list ought not to be shown in that list;
- the list should show that some part of a hereditament shown in the list is domestic property / exempt from non-domestic rating but does not do so;

Types of challenge cont.

- the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate;
- property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments;
- property which is shown in the list as one hereditament ought to be shown as more than one hereditament;
- There are others – see Regulation 4.

What is a material change of circumstances?



- Defined by paragraph 2(7) of Schedule 6 of the 1988 Act, includes:
 - matters affecting the physical state or physical enjoyment of the hereditament;
 - the mode or category of occupation of the hereditament;
 - the quantity of minerals or other substances in or extracted from the hereditament;
 - the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament;
 - matters affecting the physical state of the locality in which the hereditament is situated, or which, though not affecting the physical state of the locality, are nonetheless physically manifest there;
 - the use or occupation of other premises situated in the locality of the hereditament.

How to make a proposal

- Guidance can be found in the VOA's Rating Manual;
- No statutory proposal form set by law;
- VOA has produced its own proposal form;
- Some firms of rating surveyors/solicitors use own proposal forms based on VO versions;
- A letter may be accepted as a valid proposal if it fulfils all the statutory requirements and purports to be a proposal;

Statutory requirements for a proposal

- Set out in Regulation 6. Proposal shall be made by notice served on the VO. Notice shall:
 - state the name and address of the proposer;
 - state whether the proposer is the Interested Person (“IP”); the relevant authority; a person described in regulation 4(2)(c) (former IPs for some grounds);
 - identify the property to which the proposal relates;
 - identify the respects in which it is proposed that the list be altered;
 - Include a statement of the grounds for making the proposal. Required contents of statement vary by ground of challenge.

One bite of the cherry...

- Regulation 4(3)(a) provides that no proposal may be made by reference to more than one ground unless, for each ground relied on, the material day and the effective date are the same;
 - ‘Material day’ is (normally) the day on which the proposal is served on the valuation officer;
 - ‘Effective date’ is the day from which the alteration of the list, if made, would have effect;
- Regulation 4(3)(b) provides that no proposal may be made by an IP where that person has made a proposal to alter the same list in relation to the same hereditament on the same ground and arising from the same event (one bite of the cherry rule).

Who can make a proposal

- Regulation 4(2): a proposal may be made by:
 - an IP who has reason to believe that one of the grounds set out in Reg 4(1) exists;
 - IP ordinarily means (i) the occupier of a hereditament; (ii) any other person (other than mortgagee) having in any part of the hereditament either a legal estate or an equitable interest such as would entitle him (after the cessation of any prior interest) to possession; (iii) any person having a qualifying connection with the occupier [*e.g. related company*]
 - by a person, other than an IP, who—
 - has reason to believe that a specified ground exists, and
 - was an IP at any time during which the alteration or amendment in question had effect.

When can a proposal be made

- Regulation 5(1) provides that:
 - Subject to reg. 5(2), a proposal to alter a list compiled on or after 1st April 2005 may be served on the VO at any time before the day on which the next list is compiled;
- Regulation 5(2) adds that a proposal under:
 - a) regulation 4(1)(d) [*rateable value inaccurate by reason of an alteration made by a VO*] or (f) [*day from which an alteration is shown in the list as having effect is wrong*] may only be served on the VO before the day on which the next list is compiled or within six months of the date of the alteration, whichever is the later;
 - regulation 4(1)(e) [*inaccuracy following court decision*] may be served on the VO no later than six months after the day on which the next list is compiled.

Treatment of proposals

- VOA will consider whether the proposal is valid. If not, an invalidity notice will be served. Proposer can serve a further proposal within 4 weeks, or appeal in invalidity notice (Regulation 8);
- Within six weeks of receipt of proposal, VOA shall serve a copy on those persons specified in Regulation 9;
- Where a VO is of the opinion that a proposal is well-founded, he shall as soon as reasonably practicable alter the list accordingly (Regulation 10);
- The proposer, VO, ratepayers and relevant authorities may agree to an alteration other than that proposed (Regulation 12);
- Where a proposed alteration is not agreed to, unless withdrawn it is referred to the Valuation Tribunal.

Appeals to the Valuation Tribunal



- Procedural rules contained in the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009
- VOA must refer proposals it does not agree are well founded to the VTE within three months of receiving the proposal;
- Appeals against a completion notice or the imposition of a penalty must be sent to the VTE so that it is received within 28 days after the date on which the appellant received the completion notice or notice that the penalty had been imposed;
- No costs jurisdiction (Regulation 12).

Further appeals

- Decisions of the Valuation Tribunal can be appealed to the Upper Tribunal;
- Appeal to the Upper Tribunal is as of right (i.e. no permission stage), and hearing is de novo (regulation 42 of Appeal Regs);
- From there appeal lies to Court of Appeal, subject to the second appeals test.

Other hearings

- Where demands for the payment of rates are not complied with, local authority can apply for a liability order from the Magistrates Court;
- Provided for by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989;
- Liability orders are the gateway to various means of enforcement (bailiffs, bankruptcy, commitment to prison);
- Regulation 12(5) provides that the Court shall make the LO if satisfied that *“that the sum has become payable by the defendant and has not been paid”*;
- S111 Magistrates Court Act 1980 – appeal by way of case stated to High Court in point of law/jurisdiction. (*R (Brighton and Hove City Council) v Brighton and Hove Justices [2004] EWHC 1800 (Admin)*)

Conclusions

- Rating decisions subject to a comprehensive appeals system;
- Use of appeals system has been very popular – in September 2013 the VOA had a backlog of 168,000 appeals;
- Significant efforts made to clear backlog, but in February 2017 the Guardian reported the VOA now has a backlog 280,000 appeals;
- As of November 2016 VOA had received 1.04m appeals against business rates bills set by the last revaluation in 2010. Of those, 73% resolved, 29% (220,000) resulted in a change to the rates paid;
- VOA resolved 64,000 appeals last year vs. target of 153,000...
- VOA resources now directed to 2017 revaluation...