

Unoccupied properties

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Overview



- Generally, unoccupied properties are liable to be charged the “empty property rate”
- ... so business rates are not just a tax on occupation
- There are certain exceptions including a period of three (or in some cases six) months where rates are not charged
- In practical terms, empty property rates can cause problems e.g. during lettings voids, or pending redevelopment

The empty property rate

- Principle of liability
- The exemptions
- The chargeable amount
- Zero-rating
- Avoiding or reducing rates

Legislative basis

- Sections 45-46A Local Government Finance Act 1988
- Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008/386

Principle of liability



- Section 45(1) LGFA 1988
 - None of the building is occupied
 - Ratepayer is the “owner”
 - The building is on the rating list for the year
 - Falls within a class prescribed by the Secretary of State
 - ... But the “class prescribed” is essentially any non-domestic building (not other hereditaments: Enfield LBC v Hutchinson 3G UK Ltd [2013] R.A. 429) and land held with it
 - However, subject to exemptions in regulation 4

None of the building is occupied

- Occupation of part is occupation of the whole – so some occupation would defeat the application of the empty property rate (but potentially attract the normal rating liability)
- *Makro Properties Ltd v Nuneaton and Bedworth BC* [2012] R.A. 285
- *Sunderland City Council v Stirling Investment Properties LLP* [2013] R.A. 411

“Owner”



- The person entitled to possession (see s 65(1) LGFA)
- Where lease forfeited, the landlord: Kingston v Marlow [1995] RA 87
- Disclaimer of a lease under s 178 Insolvency Act 1986 determines the lease for these purposes and means that the landlord is entitled to possession and therefore the owner within the meaning of ss 45 and 65 LGFA 1988: Schroder Exempt Property Unit Trust v Birmingham City Council [2014] EWHC 2207 (Admin)

Exemptions (1)

(a) Building unoccupied for a continuous period not exceeding three months;

(b) Building which is a “qualifying industrial hereditament” that has been unoccupied for a continuous period not exceeding six months;

- See definition in reg. 2 of “qualifying industrial hereditament”
- Southwark v Bellway [2000] RA 437

(c) Building where the owner is prohibited by law from occupying it or allowing it to be occupied;

- Not sufficient that property could not be occupied for certain purposes because of disrepair meaning there may be an offence under health and safety legislation:
Pall Mall Investments (London) Ltd v Gloucester City Council [2014] P.T.S.R. 1184 cf
Regent Lion v Westminster [1989] RA 190

Regulation 4: exemptions (2)

(d) Building kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the building or to acquiring it;

- A planning condition is not sufficient: Hailbury v Westminster [1986] RA 187

(e) Listed building or building subject to a preservation notice;

- Richardson Development Ltd v Birmingham City Council [1999] R.V.R. 44

(f) Scheduled Ancient Monument;

Regulation 4: exemptions (3)

(g) Building with rateable value less than £2,600;

(h) The “owner” is acting in his capacity as the personal representative of a deceased person;

(i) – (m): owner is bankrupt, subject to a winding up order, in administration, or acting in capacity as a liquidator

Zero-rating



- Section 45A: charities and registered clubs
 - *Preston City Council v Oyston Angel Charity* [2012] R.A. 357
 - *Public Safety Charitable Trust v Milton Keynes Council* [2013] R.A. 275
 - *Kenya Aid Programme v Sheffield City Council* [2014] Q.B. 62
 - *South Kesteven DC v Digital Pipeline Ltd* [2016] EWHC 101 (Admin)

Empty rates avoidance schemes

- Evasion vs avoidance
- Avoidance schemes - e.g. Makro; Kenya Aid
- Re PAG Management Services Ltd [2015] R.A. 519
- 2015 consultation on Business Rates Avoidance
- General anti-avoidance measures?

Other ways to reduce rates for unoccupied buildings



- Reliefs e.g. New Build Empty Property Relief (2013-2016)
- Section 44A “partly occupied hereditaments” relief
- Avoiding completing a new building (but n.b. completion notices)
- Demonstrating not capable of beneficial occupation



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