Business rates – Assistance, relief and mitigation

The COVID-19 pandemic has had an unprecedented impact on the Real Estate sector. Some businesses were able to adapt to a more agile working environment, allowing them to weather the impact of the pandemic. Other businesses have been less fortunate, particularly those that rely on footfall such as the retail and hospitality sectors. In that context, liability for non-domestic rates (more commonly known as business rates) has been an unwelcome further financial burden. As businesses falter, landlords and tenants need to grapple with the concept of liability for business rates and the question of whether this liability can be managed. The law in the field of business rates is currently very fluid. Last year saw various changes involving the roll-out of government relief packages or assistance, and examinations into the viability of certain avoidance schemes that have become increasingly popular. For landlords and tenants, it is an area that merits close attention.

Practical steps ratepayers should be taking:

— Check your eligibility for existing government support if not already received.

— Consider if any potential reliefs might apply and seek advice if necessary.

— Monitor legal updates, particularly in relation to mitigation schemes.

— Consider if your business is in possession of the whole of the hereditament – if not, there may be options open to you to reduce your ratings liability.

— Assess any significant changes to the physical state or physical enjoyment of the premises, matters affecting the physical state of the surrounding area or other premises situated in the locality – if so, seek advice on the option to appeal your ratings liability due to a material change in circumstances.

Government assistance available to ratepayers

The government announced a number of measures designed to support businesses where cash-flow was severely impacted by the COVID-19 pandemic. These include:

— Business rates "*holiday*". In March 2020, the government extended the existing Business Rates Retail Discount, so that it incorporated occupied retail, assembly, leisure and hospitality properties in the 2020/21 tax year. The scheme works by the government reimbursing billing authorities that have exercised their discretion to provide business rates relief to qualifying businesses. The relief amounts to up to 100% of the rates bill for the 2020/21 tax year.

— Business rates grants. Also announced in March, eligible businesses received a grant of £10,000 or £25,000 depending upon rateable value of their premises. Further grants based upon rateable value were announced at the end of October, intended to support businesses forced to close as a result of national or local restrictions.

The guidance notes accompanying the business rates holiday and the retail grants announced in March made it clear that no action was required on the part of the ratepayer and that the local authority would write to eligible ratepayers directly to advise them how they would benefit. Any ratepayers that have not benefitted from one of these schemes either in the retail, leisure or hospitality sectors or with a rateable value up to £51,000 should consider checking the government publications to see if they qualify.

Who is liable for business rates?

Tenant
Where premises are let to a tenant it will normally be liable if it is in occupation of the whole of the hereditament (the area defined by the local authority so that its rateable value can be assessed). What amounts to occupation is an evolving subject that in more complex cases requires careful analysis.

Owner
Where the hereditament is unoccupied it will normally be the owner which is liable. The owner is the party that is entitled to immediate possession of it, which in straightforward circumstances will be the freeholder or head-leaseholder. In more complicated circumstances, particularly where occupation of a hereditament is shared or the hereditament is part-occupied, this may be a concept that requires closer inspection.

Available reliefs

Where a local authority has concluded a liability for business rates exists in respect of a hereditament, it is possible that the ratepayer may qualify for some form of relief and would not need to pay business rates for a period of time.

The following are either the most common forms of relief or have the potential to be relevant at the current time:

— *Empty rates relief* – a well-known concept in the Real Estate sector, empty rates relief allows a ratepayer to benefit from a rate-free period where the premises is unoccupied for up to three months.

— Relief as a result of "*forced-closure*" – a less prominent but topical form of relief that applies where the owner is prohibited by law from occupying it or allowing it to be occupied.

— Relief where premises are kept vacant as a result of action taken by the Crown or a Public Authority – again a lesser well-known form of relief but with the potential to catch business that have not been forced to close as a result of "lockdown restrictions" but that have seen trade severely impacted so that they have essentially been kept vacant.

— Relief where the ratepayer is either in *administration* or *liquidation*.

Rates mitigation schemes

For landlords left with unoccupied premises, a number of options are currently available through which they might be able to mitigate their ratings liability.

Short-term lease

One option that is relatively well-known in the market is to let out the premises on a short-term lease (of six weeks or more), following which the ratepayer will benefit from empty rates relief. The process can be repeated as part of a cycle.

Soft strip-out

Another involves the soft strip-out of the premises removing for example any partitioning, suspended ceilings, lighting, heating or other services. The effect of this might be to allow the owner to claim that the rateable value of the hereditament should be reduced to reflect the fact the premises were "beyond economic repair" or alternatively that occupation would be prohibited under health & safety legislation and as such the owner could benefit from the appropriate ratings relief.

Occupier in liquidation

The most topical of the current mitigation schemes involves utilising relief where the occupier is placed into liquidation. In this scenario the landlord could let the premises to an SPV, which would then be placed into voluntary liquidation (thus benefitting from ratings relief). At present, the Courts have upheld that whilst the purpose of these schemes is clearly to avoid liability for business rates, ratings relief will still apply. However, the Supreme Court recently considered the viability of one of these schemes and is expected to deliver its judgment in the foreseeable future. We will be monitoring the position and the implications of the judgment.

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