Top 20 ways to reduce your empty property business rates liability
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Whilst many properties have been taken out of the business rates’ regime by the 2016 Budget, many property owners are struggling to rent out vacant properties. The withdrawal of Empty Property Rates Relief in 2008 only exacerbated the situation.

The Government has promised to look at this issue but instead of waiting for political will to resolve matters, there are realistic opportunities for businesses to reduce their business rates liability. Here we have a step-by-step guide on no less than 20 strategic options available to you and your business that go beyond simply appealing the level of rateable value.

So who exactly is liable to pay rates on empty properties?
The person liable to pay rates on empty property is the “property owner” deemed the person entitled to possession of the property. This includes a tenant who has vacated but is unable to surrender the lease or find an assignee.

What empty non-domestic properties are rateable? The liability for rates on empty properties applies, in whole or in part, to non-domestic buildings and any land used for the purpose of the building. Therefore open land is not subject to an empty property rates charge.
Case law has established that the property must be capable of beneficial occupation and if this isn’t the case it may be removed from the rating list altogether.

Certain reliefs are also available under the 2008 Regulations and the Local Government Finance Act 1988.

**Beyond economic repair**

The Valuation Office Agency (VOA) will distinguish works of repair from works of renewal or improvement. Repair is not improvement but it denotes the idea of making good any damage leaving the premises, as far as possible, as though it had not been damaged.

Test cases in the Court of Appeal laid down three tests for ascertaining ‘repair’:

1. Whether the alterations go to the whole or substantially the whole of the structure or only to a subsidiary part.
2. Whether the effect of the alterations is to produce a building of a wholly different character from that which is being let.
3. What is the cost of the works in relation to the previous value of the building and what is their effect on the value and life span of the building?

The tests may be applied separately or concurrently, in light of the nature and age of the property. It is a question of fact and degree in all cases whether the works are properly classified as repairs, renewals or improvements.

Likewise, what is economically reasonable depends on the particular circumstances. The VOA will consider whether it is worth the hypothetical landlord carrying out the repairs, taking into account the likely increase in rental income and how long it would take for the hypothetical landlord to recoup the cost of the repairs.

The leading case in this area is Newbigin (VO) vs. SJ & J Monk [2015]. Lewison L J illustrated the following questions:

1. Is the hereditament in a reasonable state of repair?
2. If not, can the works which are required to put the property into a state of reasonable repair properly be described as repairs? (the repairs question) and
3. Would a reasonable landlord consider the repairs to be economic? (the economic questions).

This case has been referred to the Supreme Court.
Rates relief for empty non-domestic property - exempt properties

The regulations provide that the following types of empty non-domestic property are exempt from rates (either indefinitely or for a fixed period):

- Commercial property, such as shops and offices: 100% relief for a continuous period of three months only.
- Industrial and warehouse property: 100% relief for a continuous period of six months only.

Changes of ownership do not trigger a fresh three/six month’s exemption because the exemption applies to the property, not the person paying the rates.

Short term occupation of the property (of less than six weeks) by, for example, a tenant or licensee during the three month period will be ignored.

The three month period and the business rates exemption will continue to run during that period of short term occupation. This rule prevents owners from gaining additional periods of rates exemption by establishing an immaterial letting. If the property is let or occupied for a period of more than six weeks, the rates exemption will end at the start of that period, but, crucially, when the property becomes vacant again, a new exemption period can be claimed.

Other Exemptions include property:

- Whose owner is prohibited by law from occupying it or allowing it to be occupied. For example, where there is a breach of the fire safety regulations and a prohibition notice is served.
- That cannot be occupied due to the action of a public authority. For example, where the property is closed due to a prohibition order for health and safety reasons.
- Listed buildings. This includes property that forms only part of a listed property.
- That is empty with a Rateable Value below the minimum threshold. This is set at Rateable Value £18,000 for 2010/11. From 1 April 2011 the threshold is reduced to Rateable Value £2,600.
- That is empty whose owner is entitled to possession in his capacity as a personal representative.
- That is empty owned by a person entitled to possession in his capacity as trustee under a deed of arrangement.
- That is empty owned by individuals subject to a bankruptcy order.
- That is empty owned by a company subject to a winding up order.
- That is empty owned by a company in administration. However, an administrator is liable to pay business rates where property is being used; such as where a company in administration continues to trade from the property. But for a cautionary tale see: SoS for Business Innovation and Skills vs. PAG Management Services Ltd [2015].
Changes of ownership do not trigger a fresh three/six month’s exemption because the exemption applies to the property, not the person paying the rates.
Zero rating
A further exemption, in effect, was introduced by the 2007 Act, which provides for property to be “zero rated” where the property is empty and the property owner is:

- A charity and it appears that when the property is re-occupied it will be wholly or mainly used for charitable purposes (whether of that charity, or that of other charities).
- A community amateur sports club (CASC) where it appears that when the property is re-occupied it will be wholly or mainly used for the purposes of that CASC (or for the purposes of that and another CASC)

Discretionary relief partial occupation
The local council has discretion to grant relief in certain situations (S.44a Local Government Finance Act 1988); such as when a property is partly occupied, the property owner may apply via the Billing Authority to have an informal split of assessment to reflect the occupied and unoccupied areas. This applies where the material situation is temporary in nature for example a temporary downturn in production.

Measures to minimise business rates liability on empty property
The rates exemption available for unoccupied shops, offices and industrial property is only temporary. Therefore property owners may try to minimise liability for business rates by adopting the measures set out below.
Short term lets
If the property is re-occupied for a minimum of six weeks, this allows the owner to claim a further period of exemption (three months for retail, or six months for industrial) when the property becomes vacant again.
Therefore the use of genuine short-term lettings may be a useful way of reducing liability. For example, an owner may grant a licence or contract out lease for the occupation of a shop over the Christmas period. See Makro Properties Ltd and Makro Self Service Wholesalers Ltd vs. Nuneaton & Bedworth BC [2012].

Occupation by Charities
Charities qualify for 80% mandatory business rates relief. This may be increased by up to 100% at the discretion of a Billing Authority. The same applies to educational and religious establishments. An owner may consider a letting to such an organisation on a licence or lease to substantially reduce the cost of business rates. See: Preston City Council vs. Oysten Angel Charity [2012].

Delay completion of new property
A new property will become liable for rates from the date of its completion. Developers may therefore try to delay completion of new properties until they have identified tenants or purchasers, and they are close to exchange.
If the Billing Authority becomes aware that a property is not yet complete but it could reasonably be completed within three months, it must serve a completion notice as soon as reasonably practicable unless the VOA otherwise directs. The completion date shall be no later than three months from the date on which the notice is served.
The three month time period should not be confused with the three month exemption period in the 2008 Regulations. The two run consecutively, so there could be six months from service of the completion notice during which business rates will not be payable.

Works done after the property is completed
Certain works are customarily carried out after the property is substantially complete. It is common for shops or offices to be only completed to a shell state, to allow tenants to complete to their own specification. If the Billing Authority considers that a property is substantially complete, apart from such works, it can serve a completion notice. In setting the completion date, the Billing Authority must allow a reasonable time for the customary works to be carried out.

Appeal
If a completion notice is served and the property owner does not appeal against it, the VOA will insert an entry in the list valuing the property as if it was complete. If the property owner disagrees with the completion date they can negotiate a different completion date with the Billing Authority.
Alternatively, the property owner can appeal to the Valuation Tribunal on the grounds that the property cannot reasonably be expected to be completed by the date stated in the notice. The property owner must appeal within four weeks of receiving the completion notice.
Properties incapable of beneficial occupation

Fire or flood
Where a property (or part) becomes incapable of beneficial occupation owing to a factor such as fire, flood, storm or explosion, the VOA can remove the property (or part) from the rating list. However, for the property to be removed, the effect needs to be severe. Properties suffering simply from smoke damage, that merely require redecoration, wouldn’t qualify.

Programme of alteration and modernisation
A property can be removed from the rating list if it can’t be occupied due to an ongoing alterations and modernisation which will produce a different property from the existing one. It can only be removed once the works begin and at the point that it passes the tests set out in Monk. When the work is complete, the property will then be entered back in the rating list with a revised rateable value.

Insubstantial works would not justify deletion from the rating list, such as installing new shop fit or light refurbishment works, but it may be possible to obtain discretionary relief from the Billing Authority.

Redevelopment & Demolition
Properties that are demolished are no longer rateable. The VOA will remove them from the rating list from the date that a scheme of works commences. If properties are due for redevelopment they may similarly be removed from the rating list. See Barber (VO) vs. CEREP III TW SARL [2015].

Owners might bring forward redevelopment programmes to avoid paying rates. The VOA will check that the scheme is genuine, rather than merely a device to avoid paying rates. The VOA may also require proof that planning permission exists for redevelopment or demolition and that the scheme has commenced.

Constructive vandalism
Constructive vandalism (or “soft stripping”) occurs when a property owner removes partitioning, suspended ceilings, lighting, heating or a combination of other services without any intention to carry out further works of alteration or demolition. The owner then argues that the property is not capable of beneficial occupation and that the works required to put the property into repair are uneconomic.

A ratepayer who is considering “constructive vandalism” would need to balance any potential savings in rates against the cost of putting the property beyond economic repair, and the cost of the additional works that would be required if he subsequently wished to let or occupy the property. See Newbigin (VO) Vs. SJ&J Monk [2015].
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No demand & over supply

Where there is no demand for a property, it will command no annual rent and it may be removed from the rating list or subject to a reduced rateable value. The key here is the valuation date for the relevant rating list as considerations have to be made at that date. The valuation date for the 2010 Rating List is 1 April 2008. The Valuation date for the new 2017 Rating List is April 1, 2015. In determining whether there is any demand, the VOA will consider:

• Whether there are similar properties in the locality that are occupied at the valuation date and whether there is evidence of demand.
• Whether the lack of demand is due to oversupply, or due merely to the owner’s actions.

If there is over supply the basic premise is that increased supply weakens rental value and in addition high vacancy has a potentially adverse effect on the remaining occupiers. In some areas retailers are currently renegotiating rents and this underlines the argument. Vacancy is a relevant valuation factor.

For appeals to be successful a change will have to be shown in the use or occupation of other premises situated in the locality of the subject property.
There are a number of precedents of retailing locations which have received allowances due to the level of vacancy. New shopping centres can be granted a pioneering allowance to reflect the level of occupancy when first opened. In the office sector there are also precedents in the City of London and Thames Valley where reductions in rateable value have been granted due to oversupply.

**Consideration can be given for:**

- Any deterioration in the value of a location due to the level of vacant units in the area – e.g: if half of the shops in a shopping centre are vacant then this will be likely to reduce footfall and the value of those units still trading.

- Any deterioration in value of a location due to changes in the retailers present in the area – e.g: if certain mainstream retailers vacate their premises and are replaced by less popular retailers then this could reduce the value of a location.

- Any deterioration in value caused by the “oversupply” of retail units in an area – e.g: if half of the units in a centre are vacant then this would change the balance of supply and demand which would potentially lead to a reduction in rental value.

Where over supply is demonstrable it may be possible to secure a reduction in the level of rateable value due to this material fact.