

The Chancellor of the Exchequer announced in his pre-budget statement in November 2008, that from 1st April 2009 property which was empty and had a rateable value of £15,000 or less will become exempt from the payment of rates...for 1 year only! For the last 9 months our website has been promoting a legal way of avoiding paying "Empty Rates" on properties, except for 7 weeks in ever 59! Our clients and many owners and occupiers have benefited from our advice, and to date nobody including a number of local authorities who have read our information sheet have notified us of any problems with our advice. Our original briefing paper is therefore set out below in its original wording. If you have a property with a rateable value in excess of £15,000 we *really* think you should be interested.

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The Payment of Rates on Empty Properties...a legal way to reduce the liability?

A personal view by Ian B Sloan FRICS, Chartered Surveyor, Bankier Sloan, Centrepont, Chapel Square, Deddington OX15 0SG. Tel: 01869 338866

As many people will be aware the government announced a proposal in the Budget of 2007 which has subsequently been implemented and now 100% rates are payable by owners/tenants on empty properties once they have received the allowed three or six month void rate period in accordance with the current legislation. I wrote three identical letters to three local authorities, and received two responses, both of which are set out in full so that you may decide whether or not my interpretation of the legal position is correct. We would welcome your views and observations, whether you are from within a local authority, an agent, or a property owner effected by this legislation. I am very grateful to the local authorities for responding and for, I believe, clarifying the current legal position.



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My Thoughts...in brief

I believe what the current legislation allows you to do is to occupy a property for at least six weeks and one day (I would recommend for the avoidance of doubt this period is at least seven weeks), and then you can make a further claim on the assumption that the unit is again empty for a full six months.

If you are an individual owner of a property I suggest all you do is use the vacant building for storing something for seven weeks.... notify the council in writing as you move in, and again in writing as you move out, and claim your next 6 months void rates. I do however suggest you read the rest of this information sheet so that you fully understand the logic behind my advice.

My original letter to three Rating Authorities

Dear Sir / Madam

As I am sure you are aware this practise deals with commercial property throughout the South Midlands, and particularly in your region. I am writing in the hope that you will provide me with clear written guidance, either by post or e-mail, as to the advise I must give my clients in relation to the payment of rates on empty properties.

My understanding is that rates become payable once a property has been empty for six months, but I am particularly interested to learn the legal situation in respect of short term occupation and possible reclaiming of void rates at a later date.

I have a client, for example, who has just let a property on a three month licence to a tenant at a *peppercorn* rent, where the tenant is taking responsibility for the payment of the rates. Once this three month period has elapsed (with full rates being paid), and assuming the property then becomes vacant again, will my client then be able to claim void rates again for a further period of six months?

I would be pleased if you would clarify the position for me so that I can give appropriate guidance to my client.

If you are not capable of occupying the property yourself e.g. you operate a pension fund or family trust, you need to ensure that there is a formal lease in place, but this does not I believe have to be at "arms length" providing the documentation is in place. I believe it is possible for a company to grant to one of its subsidiaries or even to an individual director such an agreement, and on the basis that a Peppercorn Rent is being charged there will be no real costs to the individual or company involved. *(To ensure that there is no doubt that rent is being charged my recommendation is that the rent for the seven week period should be set at £10 and that a receipt is given for this sum).*

If you do not feel it is appropriate for you to grant this lease either to a subsidiary or to an individual, then the most sensible occupiers to grant it to are existing neighbours. This might offer you an excellent opportunity for generating some goodwill, and of course if you were to be totally optimistic the neighbours would take occupation and after seven weeks realise they needed to stay!

Continued...

REPLIES RECEIVED

First Reply

Further to our various correspondence and our telephone conversation, regarding the Non Domestic Rates, I would like to confirm the regulations regarding empty assessments.

Assessments with industrial descriptions will be charged at 100% empty rates after they have been unoccupied for six months. Non-industrial assessment will be charged 100% empty rates after they have been unoccupied for three months. In both cases, the assessment must be occupied for six weeks and one day before the six/three months void period is re-granted.



Ian B Sloan FRICS is sole principal of Bankier Sloan, Chartered Surveyors in Oxfordshire. The practise produces a monthly e-newsletter which gives general advice on all aspects of industrial, commercial and retail property. If you wish to be added to the mailing list please write to reception@centre-p.co.uk writing the words "yes please" in the subject box, and you will automatically be added to our mailing list.

Second Reply

I refer to your letter dated 11 August 2008 regarding rates charged in respect of empty properties.

A full charge becomes payable after a property has been vacant for a period of three months, or six months in the case of industrial properties (such as workshops and factories). However, the void exemption continues for listed buildings and hereditaments with a rateable value of under £2,200; therefore no rates are payable whilst these properties are vacant.

As you may be aware, the length of the exemption is dependant on when a property first becomes vacant and therefore if a new ratepayer becomes responsible for the payment of empty rates, no new void period can be awarded.

At this point they would then have to pay the Market Rent. Everyone would be happy!

There needs to be actual occupation. I do not believe this means there has to be total occupation, just that the occupier/tenant has exclusive occupation for the period of the tenancy. It may be that the tenant decides they only wish to store a single box in the unit during this period. I have no reason to doubt this will not constitute "occupation".

The tenancy can-not be "transient". It must be for a fixed term and the tenant must be responsible for payment of the rates during that fixed term.

A Notice to Quit. It would be sensible to write into a lease that there is a minimum tenancy of seven weeks but that the tenant has the right to terminate the lease at any time after the completion of seven weeks subject to giving 24 hours notice. *This may be an unusual clause but I believe it is legally binding.*

In order to avoid the tenant staying in occupation beyond a seven week period at a discounted rent without the owners/landlords approval I would suggest you write into the lease a clause stating that after a seven week period the rent to be paid is the Market Rent. If you wish of course to be cautious you may also wish to ensure the lease is excluded from sections 24-25 of the Landlord and Tenant Act, but I would suggest in the vast majority of cases this is unnecessary.

On the basis that you do not wish to allow the property to remain empty for a single day longer than is necessary it would probably be sensible for the owner/landlord to have the right to terminate the lease at 24 hours notice at any stage during the lease, including the initial seven week period. It would be a shame if you lost a long term tenancy for a potential short term financial gain.

What, you may be asking yourself if this arrangement proves to be unacceptable. I do not think the councils are in a position to question the validity of a lease, and there is no legislation to say the rent charged for any occupation must be at a Market Rent. If in due course the courts decide that this is an unacceptable scheme then there has been no financial loss because you would have been paying the rates anyway during the initial seven week period. If you are able to avoid paying rates after this period for a further six months then this is a considerable bonus. Clearly the larger the property and the rateable value, the more substantial the benefits.

Continued...

With regards to short term occupation, I can confirm that a property must be occupied for a period of 6 weeks or more before a new void exemption can be applied. Due to the recent changes in legislation, we would normally require our Outside inspector to view the premises to confirm that the property is occupied.

As rating law states that the person entitled to possession of the property is responsible for the payment of business rates, an account is set up in the occupier's name for the period of occupation and they are billed accordingly. The occupier must fulfil the four "ingredients" of rateable occupation which are actual occupation, beneficial occupation, exclusive occupation and non-transient occupation.

As we often need to inspect the premises, it is important that the Business Rates Office is informed as soon as the property becomes occupied (or unoccupied). Retrospective notification of a change does not allow us to do this. Therefore each application would need to be considered on an individual basis. However, we would certainly need proof of the occupation/vacation (whichever is appropriate).

Based on the information you have provided regarding your client, I would advise that a new void period would be awarded after the three-month occupation. This is providing we have been kept informed of the changes in occupation (i.e. when the property was first occupied and when it is vacated). The length of the void exemption will obviously depend on whether the property is retail/offices/industrial etc.

Please note that the information provided in this letter is for guidance only, as each case will be considered on its merits

I do not believe it is necessary to determine the exact nature of the lease but as the vast majority of people who are facing the financial burden of rates will have had experience of commercial leases my recommendation is that you use a standard commercial lease, however excluding the tenant from any liabilities relating to the insurance of the property and all the upkeep and maintenance. If you do not do this then your prospective tenant will not wish to sign the documentation!

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Summary: Ensure you have a lease between the parties, that you notify the local authority in writing of the occupation inviting them to inspect if they wish. Notify the local authority again as the lease terminates and attach to that letter a copy of the written notification from your tenant that they have vacated the property or that they will be doing so on a given date.

Liability: I give no liability what-so-ever for the thoughts and comments set out in this briefing paper. I would welcome all input from anyone involved including local authorities, a number of whom I have sent this briefing paper for their views and comments.

Available Property

For our latest list of Industrial, Retail and Office premises, please view

<http://www.centre-p.co.uk/availableproperties.htm>

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