



## **Response to the Business Rates Avoidance and Evasion Consultation September 2023**

The Society of District Council Treasurers was formed in 1974 and represents the 164 district council finance functions in England.

The Society provides a forum for members to share expertise on financial issues affecting district authorities. It also enables districts to speak with a united voice; as a Treasurers' Society it is recognised as a key local government stakeholder by central government and the Local Government Association.

The society welcomes the opportunity to feed into this important consultation.

### **Response to Consultation Questions**

#### **Q1. Would increasing the required duration of occupation during the 'reset period' from 6-weeks to 3- or 6-months, in your view, be effective in reducing avoidance through empty property rates?**

An increase for the 'reset period' should be a deterrent for companies with long term empty properties from taking money from the public purse. Therefore 3 to 6 months does not in appear to be a sufficient for the reset and the associated problems with partial occupation

As a minimum, the reset should be increased to 6 months as an incentive to secure 'meaningful occupation' the assumption would be that a business entering into a commercial contract, such as a lease would be operating as a going concern and such a commitment could be viewed demonstrating the intent of the business operations for the foreseeable future as such it would be beneficial in securing NNDR income in the longer term. Ideally, the period for occupation before a reset should be should be extended to 9 months for non-industrial to 12 months for industrial.

At the same time, legislation would need to be developed with clarity, clearly defining the responsibility and consequences where it can be reasonably concluded by the billing authority that the main purpose or one of the main purposes of the ratepayer's occupation or arrangement for occupation is contrived or artificial. Legislation should ensure that the Billing authority have a right to refuse to reset the empty period in these circumstances.

A formal right to appeal to the Valuation Tribunal for England should be introduced against rate relief and exemption decisions by the Billing Authority.

## SOCIETY OF DISTRICT COUNCIL TREASURERS



Initially the Billing Authority and the Valuation Tribunal may have to consider the additional resource that the introduction of a formal right to appeal might require. For some Billing Authorities this is not prevalent, but for others there is a huge loss to the public purse.

An alternative to increasing the occupied period is that the empty rate relief is abolished completely.

Issues highlighted by Counter Fraud professionals

- Identify whether the terms of the lease are consistent with the 'market rate' and for a period of at least 6 months. In taking such action, this should encourage the liable party to make efforts to secure occupancy and expeditiously communicate the details to the Local Authority, ensuring our records are reflective of the current occupation and composition of the hereditament.
- Consideration may be given to a discretionary relief for a period of 3 months to support Pop-ups/seasonal businesses whilst acting as a deterrent to repeated short term occupation for the purposes of tax evasion.

### **Q2. What potential issues may arise from requiring occupation for 3- or 6-months during the 'reset period'?**

This may increase the annual liability for the owners/landlords who are currently abusing the Empty Rates exemptions. This is unlikely to be a change welcomed by all.

However, they have benefitted for a number of years with significant financial gain from the legal loopholes that have allowed the business rates schemes to be abused. Billing Authorities currently have no real powers in place to address and deter business rates avoidance.

There are few properties that have a high turnover of tenants, where occupation of less than 6 weeks is genuine. Therefore there do not appear to be many potential issues for people not currently abusing the system although we recognise that this will not please those that do.

There would however be no problem at all if the empty periods were abolished completely. Owners or the person/organisation with the right to occupy would therefore pay the full rates whether the property was occupied or not.

Increased demand on hardship reliefs covering temporary financial difficulties placing the relief at the discretion of the Local Authority.

May be seen to preclude ability for Pop Ups (e.g. seasonal trade: fireworks; Summer/Winter Break) and may reduce the ability of new enterprises to 'test the market' when launching a new business.



Reduction of footfall, even in the short term due to empty premises will impact on neighbouring businesses trade.

**Q3. Would introducing a limit on the number of times EPR could be claimed in a given time period, in your view, be effective in reducing avoidance?**

Consideration could be given to minimising the EPR claim frequency allowing the exemption to apply once to a hereditament per financial year and increasing the reset period. We would support no more than one 3 month empty period in a 12 month period for non-industrial properties, and no more than one 6 month empty period in an 18 month period for industrial properties.

The ratepayer must also show that the main purpose or one of the main purposes of the ratepayer's occupation or arrangement for occupation is not contrived or artificial, and made to reset the empty exemption. Failure to do so should result in the Billing Authority refusing the reset the empty exemption.

Appeal through the Valuation Tribunal as explained in our response to question 1.

Primarily efforts should be focused on securing meaningful longer tenancies at a realistic market value (i.e. within 10% of the premises RV).

In order to support Pop Ups / Seasonal Trade a limit of one EPR claim per financial year on the hereditament could be considered.

An alternative view would be to take advantage of local knowledge, consideration may be given to allow Local Authorities to provide EPR under a discretionary scheme.

**Q4. What potential issues may arise from limiting the number of times properties can benefit from EPR within a given period?**

It is our view that there are few properties that have a high turnover of tenants, where occupation of less than 6 weeks is genuine. There are also very few properties where there is a high turnover of tenants in the year that would result in multiple genuine empty periods in a year.

Any potential issues would be limited and could be dealt with where appropriate under Section 49 of the Local Government Act under Hardship

More widely, there may be issues around:

- Reduced appeal of real estate as an investment for pension funds and large portfolio holders



- Increased financial pressure on landlords and property owners over period the premises are unoccupied
- Increased demand for Improvement relief however this should incentivise occupiers to invest in properties avoid them falling into disrepair and in the longer term make the property more marketable to prospective tenants.

**Q5. What are your views on adding additional conditions to the meaning of occupation for the purposes of determining whether a property should benefit from a further rate free period?**

Professional occupiers' such as Principled Offsite Logistics Limited have made a business of abusing loopholes in the legislation. POL Limited V Trafford Council (2018) The main business of POL is to occupy a property for a financial reward on behalf of landlords of commercial properties. This is to the exclusion of the landlord and for the purpose of minimising the landlord's liability for Non domestic rates. Their main argument in the court case was around beneficial occupation.

John Laing and Sons Ltd v Kingswood Area Assessment Committee (1948) established the 4 main ingredients of occupation and it is an appropriate time that these were further clarified in particular beneficial occupation which is the main argument in a number of cases.

The Billing authority have no right of entry to check what is happening inside properties where occupation is disputed. We must rely on information or voluntary inspections. Legislation must be amended to allow the Billing Authority the right to access where a discount or exemption is requested.

Applying a requirement that 50% of the floor space to be occupied is still subjective. This might encourage items to be strategically placed in buildings and arguments between ratepayers and the Local Authority regarding what is 50%. Full, normal use of the building may not 'occupy' 50% of the floor space and it would be an unintended consequence that some properties currently 'occupied' by a business would suddenly find themselves classed as 'unoccupied' as they did not occupy 50% of the floor space.

**Q6. How could the additional occupation conditions be effectively defined to reduce avoidance?**

Beneficial occupation is the main issue that requires a new definition.

Occupation of a property for the purposes of rates avoidance is occupation for its own sake and that other than rates avoidance there is no reason for occupation.

In question 1, we have stated that legislation would need to be developed to allow the Billing Authority to refuse empty relief if the main purpose or one of the main purposes



of the ratepayers' occupation can be reasonably concluded to be artificial or contrived to avoid the payment of empty rates either by the owner or occupant.

Beneficial occupation would therefore need to define artificial or contrived

Further clarity would be required pertaining to a premises that is capable of being occupied would reduce some of the current occupation practices outlined.

For example, where the liable party:

- legally possesses or holds rights of occupation to the premises
- intends to make a profit from occupying the premises or the goods stored at the premises are in pursuit or support the trading activities of an active business in which the liable party holds an interest.

Is the business usage is consistent with the rights held under the terms of the lease / licence to occupy?

Is the hereditament description held by the VOA (class of property) is consistent with the purpose / trading activities for which the premises is predominantly used?

### **Q7. What are your views on reforming the current arrangements for empty property rates relief and replacing them with a local, discretionary scheme?**

There are differing views on this issue depending on the outcome sought – alignment nationally or ability of local authorities to design their own discretionary scheme. Both views are presented here as there is not a single view across SDCT members.

#### *View #1 – Uniform scheme*

The empty property rates need to be uniform across the country to ensure that businesses and landlords are on a level playing field.

It would be unreasonable for larger London authorities for example to be more generous with their empty rates to encourage more building in their area, leaving smaller Billing Authorities with lower finances unable to draw customers to their areas

#### *View #2 – Local discretionary scheme*

Issues relating to the reset occupation period may impact more heavily where the business sectors in the LA area may be more heavily reliant on industry subject to seasonal variation (e.g. tourism, seasonal crops / food processing), consideration may be given to operating a discretionary scheme where the local knowledge of the area can best be applied to the relevant industry in that area. This would give councils greater control over the money they raise and avoid a one size fits all scheme.

## SOCIETY OF DISTRICT COUNCIL TREASURERS



Occupancy rates may be due to market demand and socio-economic factors which again may best be addressed by the Local Authority who will be better placed to ensure local knowledge is applied to enabling better targeting of reliefs to industry and sectors represented within their area and the ability to strike a balance between supporting local business and town centres and collecting NNDR to re-invest into the community

Where there is a saturation in the market of certain property classes, consideration may be given by the Local Authority to work collaboratively with their planning department to achieve the local government plan to enable a surplus of properties in one sector to be re-purposed to accommodate for demand areas.

### **Q8. Are there any other additional criteria which, in your view, should be met for a property to qualify for EPR?**

Fundamentally, for a property to qualify for EPR there should be no occupation of the property.

In respect to charitable purpose, instead of anticipating a future event, consideration maybe given to providing a rebate at such time that we have been notified of the incoming tenant, verified they are a Charity/CASC and received a copy of the lease agreement to identify whether the terms of the lease are consistent with the 'market rate' and for a period of at least 6 months (3 months discretionary). In taking such action, this should encourage the liable party to make efforts to secure occupancy and expeditiously communicate the details to the Local Authority, ensuring our records are reflective of the current occupation and composition of the hereditament

### **Q9. Would removing the 'next in use' exemption, in your view, be effective in tackling avoidance of EPR?**

We would strongly support this proposal as it is extremely time consuming for the Billing Authority and the Courts.

The customer claims to be a charity with charitable objectives for the benefit of the public, at the same time as attempting to claim the exemption for lengthy periods with little occupation. The loss to the public purse which will impact on the provision of services to the public far outweighing any benefit to the public of their occupation.

We would also support a review a move towards ensuring that all charities must register on the charities commission.

The current position is that you must register your charity if

- Income is at least £5,000 per year or it is a charitable incorporated organisation, and

## SOCIETY OF DISTRICT COUNCIL TREASURERS



- Are based in England or Wales.

### **Q10. What issues may be caused by the removing the 'next in use' exemption?**

We would not expect charities to normally purchase or take on leases for properties and leave them empty for long periods of time. Prior to the introduction of the 'next in use' in April 2008, contact from charities who were not going to immediately or imminently occupy the property was extremely rare

The issue arising from removing the exemption would be cashflow pressure pending occupancy of incoming Charity / CASC.

### **Q11. What are your views on how the 'next in use' exemption may be improved to minimize the opportunities for rates avoidance, including (but not limited to) introducing additional criteria or devolving the award of the exemption to local authorities?**

As set out in the response above, we would not expect charities to require the 'next in use' exemption and would support the removal. The introduction of this exemption that has created the loophole that is abused by owners and landlords and companies set up 'for the public benefit' that do not benefit the public and misrepresent why they are in occupation

However, if the exemption is to remain in place, the following are viewed as additional measures that should be put in place to limit potential fraudulent activity:

- Data Sharing with Charities Commission & Companies House to enable verification that the exemption is being sought by a legitimate trading entity
- VOA data sharing to verify class of property is consistent with the activities / function of the business in occupation, lease and rent details. HMRC trading verification.
- Potential data sharing with liability insurance register (FSA rules require a register of Employers' Liability Insurance) <https://www.elto.org.uk/> and the potential public liability insurance policy register being considered by the MoJ

### **Q12. What methods of avoidance have you encountered in the business rates system, in addition to those outlined in Chapter 1? Please include any information you have relating to the potential scale of any such activity in your answer.**

- Avoidance by insolvency of one company to be quickly replace by a new company (Phoenix) leaving outstanding debt that is unrecoverable.
- Avoidance of business rates through properties not appearing in the ratings list.

## SOCIETY OF DISTRICT COUNCIL TREASURERS



- Avoidance of empty property rates through the use of insolvency exemptions- where a tenancy agreement is put in place for the tenant to enter immediately into insolvency.
- Avoidance through failure to report a change in use – for example agricultural properties that diversify and fail to inform the Billing Authority of their new 'commercial' use.
- Business partners who claim to have split up in order to take advantage of small business rates relief.
- Directors setting up multiple business names in order to claim small business rates on multiple properties.

For the majority of rates avoidance schemes, it is difficult for the Billing Authority to prove that this is rates avoidance or what is being reported is incorrect.

### **Q13. Do you have any suggestions for what action could be taken to effectively mitigate against, discourage or prevent this behaviour?**

Requirement for Rating Agents with whom Billing Authorities will engage with to hold membership with Rating Surveyor's Association (RSA), Royal Institute of Chartered Surveyors (RICS), or Institute of Revenues, Rating, Valuation (IRRV) to enable LA's to report any 'Rogue' Agent activity to the appropriate governing body and ensure this is remedied through a complaints process / disciplinary procedure.

Government / Billing Authority raising of awareness to ratepayers of potential risk.

Legislative changes are required to enable the Insolvency service to deal with referrals from the Billing Authority (regarding Phoenix Companies for example) and to make sure that they are properly resourced to carry out the necessary investigations and to take these through the courts.

There should be a statutory duty on owners to provide the information regarding tenants to the Billing Authority without the Billing Authority having to request this. There should be no limit to the backdated charge if the owner fails to do so. Where the owner has provided false information, there should be no limit to the backdated charge payable by the owner.

The Billing Authority should be given greater powers to force owners/letting agents etc. to provide relevant information that it has in its possession which is required for the billing, collection and enforcement of business rates.

### **Q14. Are you aware of any of the forms of evasion listed above? Please include any information you have relating to the potential scale of any such activity in your answer.**





Yes but anecdotal evidence only as records will not have been kept.

**15. Are you aware of any other examples of evasion which are not listed here? Again, please include any information you have relating to the potential scale of any such activity in your answer.**

- Splits of hereditaments into multiple units falling beneath the SBRR thresholds and creation of separate trading entities carrying out the same business activities in order to optimise Rates Relief.
- False applications for reliefs and discounts: for example, a business applies for small business rate relief and fails to declare the have other business properties that would affect their entitlement
- False tenancy or lease agreements / Fictitious companies / Bogus occupiers
- Charitable exemptions where the premises is actually being used for something not related to a charity.
- Failure to report changes in circumstances / notifying of incorrect information
- Identity fraud to attempt to avoid paying for business rates
- Creation of 'offshore' companies to obstruct / prevent the recovery of liabilities
- Granting a lease to a company which then enters liquidation and thus benefits from the rates exemption
- Repeated and concurrent liquidations with companies having officers in common to dispose of business liabilities (including business rates) with assets being purchased through a pre-pack arrangement by a subsequent company.
- Fish farms, agricultural buildings exemption exploitation / misuse of agricultural exemptions (Snails)
- Constructive vandalism leaving property incapable of beneficial occupation / removed from the ratings list
- Nominal occupation (e.g. Bluetooth transmitters / small volumes of records) appearing inconsistent with the composition and size of the hereditament.
- Prolonged redevelopment periods to optimise zero rate
- Property Guardians
- Pop up companies selling low value goods – false company and contact details resulting in inability to pursue recoveries

**Q16. Do you have any suggestions on what further action could be taken to prevent evasion?**

- Improved data sharing between relevant Government Departments (HMRC; VOA) and local authorities – This will hopefully be addressed under the Non-Domestic Rating Bill
- Improved awareness of reporting mechanisms for misconduct and the relevant authorities governing those areas.

## SOCIETY OF DISTRICT COUNCIL TREASURERS



- Liaising more closely with internal licencing / planning departments to ensure no conflicts and to verify the appropriate regulations / relevant permits and appropriate licences are in place in respect of the activities of the business.
- Hereditaments being linked to UPRN's and Title Numbers to enable clearer identification of the properties they relate for easier identification of changes and amendments by other departments.
- NNDR accounts all to have a tax identification reference for the occupier (UTR/ NINO/VRN)
- 
- Land Registry updates when proprietors change.

### **Q17. Do you think billing authorities have sufficient powers to effectively combat evasion in the business rates system? If not, how do you think they should be strengthened or expanded?**

As an involuntary creditor, the Local Authority, as a collector of Business Rates, places a substantial reliance on the correct information being provided by liable parties in a timely manner (This will hopefully be addressed under the Non-Domestic Rating Bill) and has limited powers.

To enable to investigation and enforcement of NNDR liabilities / offences it would greatly assist if the LA held powers and recourse consistent with those available under The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

Consideration may be given to applying penalties for failure to notify of relevant changes in line with HMRC to act as a deterrent.

### **Q18. Will the new information that will be made available to billing authorities allow them to better combat business rates avoidance and evasion? What kind of compliance activity will it allow billing authorities to carry out?**

The duty to notify and penalties under the Non-Domestic Rating Bill this should facilitate the prompt communication of changes and amendments including rent and lease information should enable the expeditious issue of accurate bills.

The reliance is placed on the ratepayer / agent to input accurate and correct information in a timely manner, resulting in the potential providing information that may be inadequate / incomplete / false, which effectively could result in increased administrative costs and inaccurate data held to determine valuations.

The quality and accuracy of the data at the 'point of entry' if not subject to adequate verification / validation this may result in incorrect information being cascaded to multiple agencies.

## SOCIETY OF DISTRICT COUNCIL TREASURERS



The DBR (Digitalising Business Rates) single business overview should assist in instances of trading entities obtaining SBRR where it is evident that the trading entities occupy multiple hereditaments.

**Q19. Do you think there is any other information held by HMRC or the VOA which would be useful for billing authorities to have to help them to combat avoidance and evasion?**

- UTR; NINO; CRN; Charity No; VRN to validate consistent with LA liable party who is an active trading entity.
- Nature of business (SIC) / Business Activities – to verify whether this is reflective of the composition and Property Description listed with VOA.
- Trading entities present at multiple locations.

**Q20. Do you have specific views on how we can best ensure effective information sharing between billing authorities and the VOA/HMRC, once DBR and the VOA duty are in place?**

Possible re-purpose of 'Spotlight' (DWP system used by Cabinet Office for Covid Grants) or similar, with data extract facility to enable bulk uploads.

**Q21. Are you aware of any of the “rogue” rating agent activity listed above? Please include any information you have relating to the potential scale of any such activity in your answer.**

No response

**Q22. Are you aware of any other examples of poor rating agent behaviour which are not listed here?**

No response

**Q23. Do you have any suggestions for what action could be taken to mitigate effectively against, discourage or prevent this behaviour?**

Requirement for Rating Agents with whom LA's will engage with to hold membership an accredited professional body e.g. Rating Surveyor's Association (RSA), Royal Institute of Chartered Surveyors (RICS), or Institute of Revenues, Rating, Valuation (IRRV).