

Business rates: maximising the relief available



Whilst tax evasion is obviously a big no-no, it is possible as a landlord of commercial property to maximise the reliefs available when their property becomes vacant as below:

How to maximise the relief

1. Claiming the initial rate-free period

Whilst the starting point (as commonly known and accepted) is that when commercial premises fall empty, a landlord can claim a rate-free period of three months (6 months in the case of industrial property) from the date the premises become vacant, this is not necessarily the end of the story.

Indeed, as the economy continues to prove challenging, especially in the retail sector, landlords are now increasingly pursuing a succession of short term lettings (which must be not less than 42 days) to essentially reset the relief position so this can be claimed on a repeat basis every three months or so.

To assist with this, there are now companies set up to act as occupiers for this very purpose (generally on a nominal rent and charging the landlord separately a percentage of the rates liability being saved as a result of the occupation). The only requirements for the above to succeed are that the leases must be “genuine” and that the tenant must take actual “occupation” of the premises. Importantly and as confirmed in the case of R -v- Trafford 2018, a landlord’s motive for the lettings is irrelevant and, as long as there is some genuine storage for example, then the structure is almost certain to succeed.

2. Granting a lease to a newly formed company

In addition to the above and as an alternative, it is also becoming increasingly common for landlords to minimise their exposure to business rates on empty premises by granting a lease to a newly formed company (created by a third party), who then becomes liable for the business rates and is immediately put into liquidation (which exempts it from its rates liability). Whilst upheld in the case of Rosendale 2017 as “a genuine structure” the approach is essentially weakened as a result of the structure being subject to a claim the same is a sham and, at the time of writing, the Rosendale case is expected to go before the Court of Appeal by the end of 2018, which may see the structure prevented moving forward.

3. A residential guardian is put in place to occupy the property

Finally, and whilst far less common than the above structures, it appears it will be possible for landlords to avoid liability for business rates where a residential guardian is put in place to occupy the property (for example to prevent trespass/damage), which will exempt the property from business rates as the use of the premises will be residential. This approach was recently reviewed in the case of Ludgate House -v- Ricketts 2018 and, whilst the same failed in that instance, the ruling does appear to confirm that this is a potential structure which may, in certain circumstances, succeed.

In conclusion, whilst a number of options are available, it appears successive short term lettings (for not less than 42 days) is the best approach to mitigate business rates liability during void periods.

Please contact our [real estate team](#) to discuss further.



[Craig Burton](#)

Partner