GERALD EVE'S RATING NEWS UPDATE

MARCH 2012

'STONKING RISE' IN BUSINESS RATES

The business rates bills landing on the door mat this month are going to show what the British Chamber of Commerce has described as a 'stonking' 5.6% increase, based on last September's Retail Prices Index. Despite January's RPI having fallen to below 4% with further reductions predicted and notwithstanding strong lobbying from all business groups, the Chancellor has so far resisted calls for a lesser increase.

UNIFORM BUSINESS RATES 2012/13

As a consequence, these will be the Uniform Business Rates (UBR) for 2012/13.

Country	Small UBR 2011/12	Small UBR 2012/13
England	42.6p	45.0p
Scotland	42.6p	45.0p
	Large UBR 2011/12	**Large UBR 2012/13**
England	43.3p	45.8p
Scotland	43.3p	45.8p
	UBR 2011/12	**UBR 2012/13**
Wales	42.8p	45.2p

The criteria for determining whether the large or small UBR applies differs between England and Scotland and will be included as usual in our Rating Data Card which we will send you later this month. It is noteworthy however that the rules change in England from 1 April 2012. Previously, the small UBR was applied only to ratepayers who qualified for Small Business Rates Relief. From April, all occupied properties below the relevant RV thresholds will automatically have the small UBR applied to their bills – these are below RV £25,500 in London and below £18,000 elsewhere in England. Somewhat perversely perhaps, the large UBR applies to the same properties should they fall vacant.

The UBR supplement for large properties increases on 1 April 2012 from 0.7p to 0.8p and therefore for ratepayers with properties above these thresholds the UBR increase next year becomes 5.8%.

The further UBR supplement paid by ratepayers in the City of London which has been held at 0.4p for six years remains at this level for 2012/13, but the Corporation has warned that it may need to increase it in 2013/14.

If an increase of 5.6% is described as 'stonking' we wonder what superlative should apply to the 26.7% jump that some 50,000 ratepayers in England will experience. This hike will be seen by properties which experienced the larger RV increases at the 2010 revaluation and whose bills are therefore still being phased in to their full level.

RATES DEFERMENT SCHEME

Whilst the Chancellor resisted calls to reduce the 5.6% UBR increase, he offered businesses some assistance in the Autumn Statement by announcing a rates deferment scheme similar to the one that has been operation between 2009/10 and 2011/12, under which ratepayers can opt to defer 60% of the RPI linked increase.

Regulations have still not been made but details of how the scheme is to operate in England have been provided. Ratepayers will be able to defer 3.2% of their 2012/13 bill and repay it equally over the subsequent two years, without interest.

The devolved administrations in Scotland and Wales will also be offering similar rates deferment schemes.

Businesses wishing to opt to defer will need to apply separately to each billing authority identifying the relevant properties. Should the ratepayer sell a property for which deferment had been given, or default on payments, then the deferred sums will become immediately payable.

We have a number of concerns regarding the scheme, some of which are borne out of the experience of managing a similar scheme that operated from 2009/10 until 2011/12. Firstly, as the new scheme was announced last November we cannot understand why the Regulations were not laid more speedily, such that businesses could apply for and benefit from the deferred sums being included in their initial rates demands for 2012/13. Instead, the bills now being issued are on the basis of full liability and businesses have to commence full monthly instalments and manage subsequent adjustments to their monthly payments once their applications have been processed. The Government says that ratepayers should see the benefits of deferment in their July instalments if their applications are submitted by 9 June, although this is dependent upon councils issuing and processing application forms in good time and having updated their rating software.

This leads to our second concern, which is that the performance of many councils in managing the 2009/10 deferment scheme has been sorely lacking. Many local authorities were incapable of calculating liability and deferred amounts accurately, nor allocating payments appropriately. We provide a fully outsourced Rates Payment Management Service for over 18,000 of our clients' properties and regularly received hundreds of incorrect bills, final reminders and even summonses for non-payment in respect of the deferment scheme. Our team had to spend countless hours on the telephone each month explaining to billing authorities why their demands, reminders and summonses are incorrect. We doubt whether ratepayers themselves have the resources to challenge councils in this way and are therefore losing some of the benefit that deferment is intended to bring. We will be meeting with the Department for Communities and Local Government to highlight our concerns and seek an improved performance from billing authorities.

SMALL BUSINESS RATES RELIEF

Regulations have been introduced to give effect to the continuation of the enhanced Small Business Rates Relief scheme in England for the whole of 2012/13 as reported in our **Autumn 2011 Rating News Update**.

LOCALISM ACT 2011

Two business rates related measures introduced by this Act are due to come into effect on 1 April 2012.

One is the much delayed 'cancellation of certain backdated rates liabilities' promised by the Government in its coalition agreement. This followed the upheaval caused to many port occupiers when the Valuation Office Agency undertook a review of assessments in 2007/8, creating some massive new liabilities backdated to April 2005. Regulations have now been made under the Localism Act which, in effect, lead to the cancellation of backdated liabilities in tightly defined circumstances (although not restricted to ports). The complexity of the Regulations and the 59 page supporting guidance note provide an indication as to the reasons for the long delay in implementing these measures.

The other is a new wider power for local authorities to grant discretionary rates relief. Presently, the circumstances when such relief can be granted are restricted by legislation to certain non-profit making bodies. From 1 April there will be no such restrictions and the Government claims that this new power grants local authorities wide freedoms to support local businesses and growth. Mary Portas, in her December 2011 'review into the future of our high streets' called on councils to use this new power to grant business rate discounts to start-ups on the high street, as well as to allow ratepayers to pay rates over 12 months rather than by 10 monthly instalments.

This all sounds positive in theory but in practice we question how widely these powers will be used. The existing discretionary power is used very sparingly by councils, notwithstanding that 75% of the cost of relief granted is met by the Exchequer. This central support will remain for the non-profit bodies presently qualifying, but the costs of granting new reliefs will have to be met in full by the local authority. Local government is experiencing unprecedented financial challenges and may well be unwilling to grant rates relief if it has to fund the cost by increasing its Council Tax charges.

LOCAL GOVERNMENT FINANCE BILL

Local authorities might, however, have additional funds to support such rates discounts when/if the intended benefits of the Local Government Finance Bill, presently working its way through Parliament, are realised. The Bill will allow for a scheme of Business Rates Retention through which councils will be permitted to retain some or all of the growth in rates revenues they achieve compared with a baseline position, to be set at the start of the 2013/14 rate year. We described the principles in greater detail in our **Summer 2011 Rating News Update**.

Whilst most of the detail of the operation of business rates retention will be reserved for regulations, the debates in the Commons on the primary legislation have only served to highlight just how complex the scheme will be. We are expecting still further technical papers to expand on those consulted upon by the Government last Autumn. Local authorities will find it extremely difficult to predict the likely financial benefit of growth opportunities under consideration due to the opaqueness of the likely scheme. Furthermore, local government experts are expressing their doubt as to whether the financial incentives will be sufficiently large or transparent to influence behaviour. There is also concern that local decisions may be taken for short term financial gain rather than for other relevant considerations.

Despite all these concerns, the localism bandwagon is rolling on apace with the government set on having this radical new system in place in just over 12 months' time. One thing that is certain is that billing authorities will in future invest greater effort in collecting business rates, given that growth will be theirs to retain rather than simply pass to the centre. They are likely to show an increased interest in the content of, and values shown in, local rating lists, identifying missing and undervalued properties to the Valuation Office Agency and serving completion notices to enable empty property rates to be charged on new properties nearing completion. They will aim to increase their collection of business rates and will become more enquiring of empty property rates avoidance and mitigation actions.

EMPTY PROPERTY RATES

As the Chancellor's Budget on 21 March nears, calls for change to the empty property rates regime have increased. The British Property Federation has relaunched its campaign with a dedicated website at **www.bombsitebritaintax.co.uk** and is encouraging owners to sign the petition with No.10 at **http://epetitions.direct.gov.uk/petitions/318** which was instigated initially by the Business Centre Association.

Prudent property owners with vacant buildings are looking at all legal means to avoid or mitigate their liabilities and, even in advance of a business rates retention scheme, local authorities are becoming more enquiring about some of the mitigation activities being utilised. It is vital therefore that appropriate professional advice is taken to ensure that you stay on the right side of the law. The Charity Commission has issued a warning to charities occupying properties in order to receive 80% mandatory rates relief and receiving 'donations' from landlords as a consequence. It is presently investigating 700 tenancy agreements to ensure the charities' trustees have properly discharged their duties.

Unless the Chancellor responds positively, empty property rates will continue to be charged in 2012/13 for premises with assessments above RV £2,600.

SCOTLAND – CHANGES NOW AND IN THE FUTURE

Health Tax aka 'The Tesco Tax'

The Scottish Government's so-called Health Tax comes into effect on 1 April 2012 affecting retail premises with a Rateable Value in excess of £300,000 licenced for the sale of both alcohol and tobacco. A UBR levy of 9.3p (about 20%) will be charged in 2012/13 which will increase to 13p (28%) for 2013/14 and 2014/15. This levy, expected to raise £95m, will primarily impact the supermarket sector and will be in place until 31 March 2015.

Enterprise Areas

In his recent Budget, the Finance Secretary announced 14 Enterprise Areas across Scotland, of which 12 will offer business rates relief, with other forms of tax relief applicable to the others.

The Areas within which rates relief will be available are:

Irvine – part (N. Ayrshire)
Forres (Moray)
Inverness Campus (Highland)
BioQuarter (Edinburgh)
Biocampus (Midlothian)
Hatston (Orkney)
Arnish (Western Isles)
Scrabster (Highland)
Lyness (Orkney)
Leith (Edinburgh)
Creative Clyde (Glasgow City)
Prestwick International (S. Ayrshire)

To qualify for rates relief, the premises must be either

(i) a new entry in the valuation roll made after 1st April 2012; or
(ii) have been unoccupied for a continuous period of three months before the person seeking relief took occupation.

In addition, the business activity undertaken at the property must be one concerned with specific activities identified for that Enterprise Area.

For premises that meet these qualifying criteria, there is a sliding scale of rates relief depending on the Rateable Value of the premises, from 100% at RV £120,000 and below, to 2.5% at above RV £2.4m.
All reliefs are limited by de minimis State Aid limits (currently €200,000 over a rolling three year period).

Empty Property Rates Relief

The indications are that the Government will proceed with its proposal to reduce the empty rates relief exemption on commercial premises in Scotland from 1 April 2013. At present, commercial premises that are empty receive an initial three month rate free period followed by 50% rates relief, but under the new plans this relief will reduce to 10%. The Government has indicated that it will continue with full rates relief on vacant storage and manufacturing premises and listed buildings.

Review of Business Rates

Following the announcement of a 'review of the operation of business rates' which we reported in our **September 2011 Scottish Rating News Update** the Government has consulted informally with various sectors. We attended a meeting with the Executive in December and offered suggestions to make the system operate more efficiently for ratepayers. The Scottish Government confirmed its intention to improve but not replace the current system. Following the various meetings, the Government will be issuing a formal consultation paper expected in the Spring with any reforms implemented at the next revaluation in 2015.

Appeals making their way towards Lands Valuation Appeal Court

In our **Autumn 2011 Rating News Update** we commented on the successful appeals we had led concerning shops in the Mercat Shopping Centre in Kirkcaldy where we claimed that the 2010 revaluation assessments should be reduced on the grounds of a Material Change of Circumstance (MCC), i.e. the fall in rental values between April 2008 and April 2010. As anticipated, the Fife Assessor has appealed the decisions and we are hoping that they will be heard by the Lands Valuation Appeal Court in May.

We were similarly successful at another Valuation Appeal Committee concerning our clients' shops at The Overgate in Dundee. Whilst the arguments were similar, these appeals were taken as revaluation challenges, rather than MCCs, with the same determination that the reduced rental values by April 2010 must be taken into account in the rating assessments. The Assessors' appeals against these decisions will probably follow behind the hearings relating to the Mercat Centre.

WALES – ALSO REVIEWING BUSINESS RATES

And lastly, not to be left out, the Welsh Government also launched an Independent Review of Business Rates, tasked with considering whether current policies meet the needs of Welsh businesses, and the implications of rates relief policies, specifically small business rates relief and empty property rates relief. As in Scotland, the stated intention is to improve rather than replace non-domestic rates.

The review group is due to present its draft report to Government this month, which will respond in Summer 2012.

GERALD EVE'S UK OFFICE NETWORK

Gerald Eve is the pre-eminent business rates adviser. We currently advise a quarter of the FTSE100 companies on rating matters. We have saved our clients occupying over 50,000 properties throughout the UK more than £1.5bn in rates liabilities over the last five years.

We are very keen to tell you more about our approach and how we can assist you, so please contact **Jerry Schurder** on **020 7333 6324**, **jerryschurder@geraldeve.com** or your usual Gerald Eve contact to find out more.

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