

GERALD EVE'S RATING NEWS UPDATE

MARCH 2014

Business rates continues its almost unprecedented media profile as a consequence of the continuing cacophony of complaint with the current system and an ongoing flow of proposals for change promoted by parliamentarians, trade organisations and think tanks.

Before commenting on these in this Rating News Update, we have detailed the range of rates related measures included in the Chancellor's Autumn Statement in December.

UNIFORM BUSINESS RATES (UBR) 2014/15

Each of the English, Scottish and Welsh Governments has confirmed that the UBRs for 2014/15 will increase by 2% rather than last September's Retail Prices Index of 3.2%. Large properties in England and Scotland pay a UBR supplement to part fund Small Business Rate Relief schemes, which is to increase from 0.9p this year to 1.1p for 2014/15. This means that for large properties the UBR increase for 2014/15 is 2.3%.

A small but not insignificant number of properties are still seeing their bills being phased in under the transitional relief scheme following the 2010 revaluation – these will increase by up to 27.4%.

Properties in London with assessments above RV £55,000 continue to pay a 2p in the £ UBR supplement to fund Crossrail. This means the UBR for these properties will be 50.1p – the first time since its introduction in 1990 that the UBR has exceeded 50p. All City of London properties face a further UBR supplement of 0.4p.

UBRs for 2014/15 as well as the transitional relief percentages are shown in our separate Rating Data Card 2014/15 enclosed with this Rating Update.



SMALL BUSINESS RATES RELIEF (SBRR)

The existing SBRR schemes in England, Scotland and Wales continue in 2014/15 with only modest amendments.

The rules in England are complex. Essentially a business can qualify if it occupies only one property in the country, but it also qualifies if it occupies more than one so long as the cumulative RV is below £18,000 (£25,500 in London) and only one property has an RV greater than £2,600. In a move designed to remove a claimed disincentive to growth, if a business takes on an additional property from 1 April 2014 which would normally result in the loss of entitlement to SBRR, it will retain its SBRR on the originally qualifying property for a further year.

A minor modification in Scotland is that a business will still qualify for the Small Business Bonus Scheme for any property assessed below RV £18,000 if the cumulative RV of its properties in Scotland is below £35,000, increased from RV £25,000 in previous years.

£1,000 RATES DISCOUNT FOR 'RETAIL AND FOOD AND DRINK PREMISES'

In his Autumn Statement the Chancellor announced a discount of up to £1,000 in each of 2014/15 and 2015/16 for 'retail and food and drink premises' in England with RVs no greater than £50,000.

The Government has subsequently issued guidance¹ to local authorities on the property uses that it considers should qualify and how the £1,000 discount should be applied. We say 'should', not 'will', because this scheme, as with a number of others that have been or are being implemented, is to be operated at the discretion of local authorities. The Government expects councils to exercise their discretion favourably in appropriate circumstances and will reimburse their costs should they do so, but the Government cannot compel the grant of a discretionary relief, nor impose processes for its implementation. The discretionary nature of the discount also has significant implications in respect of European State Aid which we refer to below.

The guidance states that the £1,000 discount will apply to occupied hereditaments only which are 'wholly or mainly used as shops, restaurants, cafes and drinking establishments'.

It gives examples of uses which the Government considers meet this criterion, i.e.

i. Hereditaments that are being used for the sale of goods to visiting members of the public:

- Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, chemists, newsagents, hardware stores, supermarkets, etc)
- Charity shops
- Opticians
- Post offices
- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/ caravan show rooms
- Second hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:

- Hair and beauty services (such as: hairdressers, nail bars, beauty salons, tanning shops, etc)
- Shoe repairs/ key cutting
- Travel agents
- Ticket offices e.g. for theatre
- Dry cleaners
- Launderettes
- PC/ TV/ domestic appliance repair
- Funeral directors
- Photo processing
- DVD/ video rentals
- Tool hire
- Car hire

iii. Hereditaments that are being used for the sale of food and/ or drink to visiting members of the public:

- Restaurants
 - Takeaways
 - Sandwich shops
 - Coffee shops
 - Pubs
 - Bars
-

The guidance also identifies uses that should not qualify, i.e.

i. Hereditaments that are being used for the provision of the following services to visiting members of the public:

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting office

ii. Hereditaments that are not reasonably accessible to visiting members of the public

Implications of European State Aid de minimis rules

A complicating factor is that this scheme is to be subject to normal European State Aid de minimis rules which limit an entity from receiving State Aid in excess of 200,000 Euros over a rolling three year period. This presently equates to approximately £165,000.

The guidance suggests that local authorities should apply the discount to rate bills automatically without businesses having to apply for it. It adds that rates demands could be accompanied by an explanation of the European State Aid de minimis rules and a declaration that would need to be completed only if an organisation had already received some State Aid qualifying relief over the current and previous two years, or if it needed to refuse the relief as it had exceeded the 200,000 Euros relief limit.

Some authorities are nonetheless refusing to grant the relief without an application having been submitted claiming entitlement to the relief. The Department for Communities and Local Government refuses to intervene on the basis that as this is a discretionary relief, local authorities can act as they think fit.

European State Aid de minimis rules – a brief summary

The State Aid rules regulate public sector intervention, with the aim of ensuring fair competition and proper functioning of the single market. Giving unregulated financial support to some business would

- risk distorting competition within the European Common market; and
- hinder the long term competitiveness of the European Union

However, small amounts of aid ('de minimis' aid) awarded in accordance with the Commission Regulation EC/1998/2006, is regarded as compatible with the common market.

A company may not receive relief which qualifies as European State Aid amounting to greater than 200,000 Euros (around £165,000) over a rolling three year period. The ceiling for de minimis aid for undertakings involved in road transport is 100,000 Euros. Most agricultural enterprises cannot be given de minimis aid.

In order to speed the implementation of a range of business rates relief schemes implemented and announced recently, the Government has provided for them to be delivered via the local discount discretionary powers available to councils under the Localism Act 2011. This has the benefit of enabling them to be implemented without any new legislation or regulations, but the key downside is that discretionary rates relief qualifies as State Aid and under European legislation there are limits as to the extent of such aid a business may benefit from.

Examples of rates relief schemes already in place which are subject to the State Aid limits are those that apply in Enterprise Zones and the New Build Rates Relief Scheme (see our Rating News Update September 2013).

The European State Aid de minimis rules are complex but helpful guidance was issued by the Government in relation to business rates relief for properties in Enterprise Zones².

The Government's guidance states that the de minimis thresholds apply to an entire enterprise and therefore all aid received by a parent company and its subsidiaries are combined to determine the maximum aid permitted.

The onus is in the recipient of aid to demonstrate that it can receive the discretionary business rate discount within the de minimis threshold and local authorities are responsible for ensuring the rules are met.

12 MONTHLY INSTALMENTS

One might have expected less complexity with another Autumn Statement announcement that, from April 2014 businesses in England will be able to discharge their rates liabilities over 12 monthly instalments, instead of the 10 payments from April to January (inclusive) which has been the norm. Not a bit of it!

Rather bizarrely, and unhelpfully, the Government announced that ratepayers would need to apply to pay by way of 12 instalments.

DCLG has issued guidance³ on this topic together with draft amending regulations which are intended to come into effect on 1 April.

The way this process will operate is that if a business submits a notice to the billing authority indicating that it wishes to pay its business rates bills by 12-monthly instalments in time for the authority to issue (or reissue) a demand notice by 15 April 2014, then the billing authority will be required to allow the business to pay by 12 monthly instalments throughout the 2014/15 financial year. Applications submitted before the regulations come into effect will suffice for this purpose.

If the demand notice is issued after 15 April, then the number of instalments will be the number of full months remaining in the year. Once a business has submitted a request for monthly instalments, it will not need to reapply in future years – the arrangement for 12 monthly instalments will carry forward.

Neither the Welsh nor Scottish Governments presently intend to require local authorities to allow 12 instalments but councils do have discretion to come to payment arrangements with ratepayers.

RATES RELIEF FOR PREMISES AFFECTED BY RECENT FLOODING

During the height of the floods which affected significant parts of England during the winter, the Prime Minister announced a rates relief scheme for business adversely impacted. This was followed by further DCLG guidance⁴. It covers a variety of aspects concerning premises affected by flooding, both domestic and non-domestic. In addition to the rates relief issues there is other support available in certain circumstances.

In the context of relief from business rates, 3 months' rates free is available for any non-domestic property which was flooded for any day between 1 December 2013 and 31 March 2014 – regardless of how long the actual impact was. Qualifying conditions are:

- 1) the hereditament has been flooded in whole or in part as a result of adverse weather conditions; and on that day, as a result of the flooding at the hereditament,
- 2) the business activity undertaken at the hereditament was adversely affected; and
- 3) the rateable value of the hereditament on that day was less than £10 million.

This relief is also discretionary and Government expects each authority to adopt a local scheme on which to decide individual applications. Very small or insignificant impacts are to be ignored and councils will not be able to grant themselves this relief. As this is a discretionary scheme it will again be subject to European State Aid de minimis rules.

This relief is not available to properties which were not flooded even if they have been adversely impacted by the effects of local flooding. SMEs affected may be able to claim assistance from a separate support scheme but this is not intended to replace insurable risks.

There have not been any similar announcements from the Welsh or Scottish Governments.

REOCCUPATION RELIEF SCHEME

Another DCLG guidance note can presumably be expected shortly to provide details as to how councils are expected to implement yet another 'discretionary' scheme revealed in the Autumn Statement. Local authorities will grant a 50% discount from business rates for 18 months to those occupying retail premises with RVs no greater than £50,000, so long as they were vacant for the previous 12 months and are again occupied on a date between 1 April 2014 and 31 March 2016.

The guidance is expected to clarify whether this scheme will be limited to retail premises or will also apply to the other uses which are to benefit from the £1,000 discount and whether it is the previous or new use that have to be retail to qualify – or both.

The Welsh Government introduced a similar scheme in October 2013 – the 'Open for Business' scheme – which grants 50% rates relief for 12 months to those occupying properties vacant for at least a year with assessments no greater than RV £45,000. To qualify the property needs to be occupied between 1 October 2013 and 31 March 2015 and when last occupied must have been wholly or mainly used for retail purposes.

Both the English and Welsh schemes mirror the Scottish 'Fresh Start' scheme which is being expanded from 1 April 2014, with the RV threshold increasing from £45,000 to £65,000 and qualifying premises extended to include those that had been used as a hotel, restaurant or public house.

These reliefs are all subject to European State Aid de minimis limits.

COUNCILS INCENTIVISED TO SUPPORT FRACKING

In addition to the new business rates discounts and reliefs summarised above, the Government also views the additional rates income potentially available to local authorities from their facilitating new development as a useful economic tool.

An example is the recently announced rates incentive for local authorities to promote shale gas sites⁵. Under this scheme, local authorities which grant consent for fracking will be able to retain all the business rates income from such sites – which the Government suggests could typically be around £1.7m per site.

2017 RATING REVALUATION – CHANGES AFOOT?

All the changes described above have come about and are being implemented over a very short time frame – mostly, we would suggest, as a response to media activity and extensive lobbying over perceived problems with the rating system. The UBR capping, retail discount and other new reliefs have been described as 'tinkering' or a 'sticking plaster', whereas there is a growing body of opinion that fundamental review and reform of business rates is required – some are calling for its replacement. This has clearly influenced the Government's decision to commence its own review but one for which the terms of reference do not go nearly far enough for many.

Arguably, the catalyst for the complaints was the Government's decision to postpone the planned 2015 rating revaluation for two years, which maintains rates liabilities until April 2017 based upon property rental values at around the peak of the market in April 2008.

The British Retail Consortium's (BRC) members have become increasingly dissatisfied with the rating system, regarding a tax on bricks and mortar premises as outmoded when retail sales are increasingly effected online. It appointed management consultants EY to recommend changes to, and alternatives, to business rates and has recently narrowed these down to four options⁶ which it will expand upon in its final report in May 2014.

These are:

1. Shifting the basis for taxing property by replacing the current system with a tax based on other measures, for example, energy usage.
2. Rewarding employment by delivering a discount to the Business Rates bill based on a given value per employee, capped at an overall proportion of company rates bill.
3. Supporting successful business by providing a discount to the Business Rates bill based on a percentage of Corporation Tax payment, capped at overall proportion of company rates bill.
4. Modernising the existing system by introducing a simplified, banded revaluation system, with revaluations on a more regular basis.

The Department for Business, Innovation and Skills Select Committee recently published its Retail Report⁷ having received extensive written and oral evidence. The Committee calls for a wholesale review of business rates to 'examine whether retail taxes should be based on sales rather than the rateable value of a property; whether retail needs its own system of business taxation; and how frequently revaluations should take place'.

THE GOVERNMENT'S REVIEW OF BUSINESS RATES ADMINISTRATION

The Government could not remain silent in the face of all of these calls for change and as part of the Autumn Statement announced the intention to review options for longer term administrative reform of business rates post-2017, with the caveat that any changes would be required to 'maintain the aggregate tax yield' – a requirement criticised immediately by the proponents of more fundamental reform.

It pre-empted this administrative review by launching a consultation on the rating appeals process with proposals to effect changes by 1 October 2014, intended to 'provide greater transparency over how rateable values are assessed, improve confidence in the system and allow well-founded challenges to be resolved faster'.

We supported these principles but concluded in our response⁸ that the proposals would not achieve their aims and that implementation should be deferred for consideration alongside the review of business rates administration. We highlighted that transparency in rating valuations is an integral part of the ability to undertake more frequent rating revaluations.

The reference to more frequent revaluations is pertinent, not only because these are now seen as a fundamental requirement of any reformed rating system, but also because it was included within the terms of reference of the Government's own review which will be launched formally in the Spring⁹.

The review will include consideration of the:

- administration of billing and collection by local authorities, including the application of reliefs and exemptions; and of valuation by the Valuation Office Agency, including the scope for improvements in communication and the exchange of information between ratepayers and public bodies
- the circumstances under which liability can be backdated
- changes to valuation methods, consistent with the principle that business rates are based on rental property values and that the rates retention system rewards local government for growth in values
- frequency of revaluations to enable tax assessments to be based on up-to-date property values

Our head of rating, Jerry Schurder, has been asked by HM Treasury to participate in a small group informing the Government's review of administrative reform. He has also met recently with the EY team leading the BRC's review, specifically to provide expert input to their Option 4 proposal.

Our view – in outline – is that most of the criticisms of the existing regime can be addressed effectively by modernisation of the business rates system, including far more frequent revaluations, greater transparency over rating valuations and bills and a scheme of properly targeted reliefs and exemptions. Rates are the only national tax where the total take remains the same regardless of prevailing economic conditions. We believe that the Government should fix the tax rate, i.e. the Uniform Business Rate, at a sustainable and realistic proportion of market rental value, with bills fluctuating in line with rental value changes at each frequently occurring revaluation.

COUNTDOWN TO THE 2017 REVALUATION

Assuming the next rating revaluation does occur in April 2017, the rental valuation date on which the new assessments will be based is likely to be 1 April 2015, two years prior to the revaluation, allowing Valuation Officers time to prepare the new assessments.

With a year to go until this valuation date, it is important to highlight that the outcome of rent reviews, lease renewals and new lettings over the next 12 months will be a key determinant of the level of rates payable for the duration of the 2017 rating revaluation period.

All referenced documents can be downloaded in full at <http://ratingnewsupdate.geraldeve.com>

1. Business Rates: retail relief guidance
2. Enterprise Zones and Business Rate Discounts – state aid guidance
3. Business Rates information letter – 12 monthly instalments
4. Flood support schemes guidance note
5. Rates incentive for local authorities to promote shale gas sites
6. Business Rates: The Road to Reform
7. House of Commons, Business Innovation and Skills Committee – The Retail Sector
8. Checking and Challenging your RV – Gerald Eve response
9. Business Rates administration review: Terms of reference

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 70,000 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 **+44 (0)20 7333 6324**, jschurder@geraldeve.com or your usual Gerald Eve contact to find out more.

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