Empty Rates – Avoidance or Evasion?

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Empty Rate – Avoidance or Evasion?

**Past** – history and background

**Present** – current legal position

**Future** – issues and challenges
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Past

1 April 2008:
- Empty rates no longer billed at 50%
- ‘Qualifying industrial hereditaments’ no longer exempt
- Aim: to encourage the owners of empty premises to bring them back into use (and to raise revenue?)
Present

Key cases:

*Makro v Nuneaton and Bedworth BC* [2012] EWHC 2250 (Admin)

*Public Safety Charitable Trust v Milton Keynes Council* [2013] EWHC 1237 (Admin)

*South Kesteven DC v Digital Pipeline* [2016] EWHC 101 (Admin)
Present

Defining terms:

*Tax evasion* – unlawful, potentially criminal. Avoiding paying tax that is due.

*Tax avoidance/mitigation* – lawful. Altering arrangements to avoid becoming liable to tax.
Rates Evasion

e.g. lying about whether / when / by whom premises are occupied.

Remedy

- Bill for rates liability

- Criminal offence of fraud by false representation if dishonest:
  Fraud Act 2006, ss1-2
Rates Avoidance

Case 1: Makro – the ‘intermittent occupation’ scheme

Pallets of paperwork in place for just over 6 weeks; using around 0.2% of floor space.

Magistrates court found:
- Usage was minimal; no actual occupation.
- Potential avoidance of rates liability the only benefit; no beneficial occupation.
Rates Avoidance

Case 1: Makro

High Court findings:

- Slight user plus intention to occupy = actual occupation.

- Paperwork had to be stored somewhere; therefore beneficial occupation.
Rates Avoidance

Case 2: PSCT – the ‘charitable use’ scheme

A registered charity; not disputed its use was charitable.

PSCT took a lease, thereby becoming the ‘owner’ and liable. ‘Occupation’ by way of wifi/Bluetooth box(es).

Key question: “wholly or mainly used for charitable purposes”? 
Rates Avoidance

Case 2: PSCT

High Court:
- ‘wholly or mainly’ applies to *amount* of use, as well as *purpose* of use (confirming *Kenya Aid Programme*).
- hereditament can therefore be mainly unused, as it was here
Rates Avoidance

Case 3: Digital Pipeline – the ‘second generation’ charitable use scheme

Intermittent occupation by a charity for two day appeals.

Claimed 80% mandatory relief on appeal days, zero rating the rest of the time.
Rates Avoidance

Case 3: Digital Pipeline

Magistrates’ court
- Not occupied between appeals;
- 42% of space used on appeal days;
- Premises nevertheless wholly or mainly used (having regard to the absence of any other use)
Rates Avoidance

*Case 3: Digital Pipeline*

High court:
- Overturned magistrates’ court because it put weight on absence of another use
- Floorspace calculations are not determinative of the outcome; could go either way
Rates Avoidance

Lessons learnt

- A technical question: who is liable?
- There is no magic bullet.
- Billing authorities alone cannot make the system work.
Future issues

Chronology

- Dec 2014: Business Rates Avoidance – discussion paper

- Jul 2015: Summary of consultation: “business rates avoidance must be addressed”

- ...
Future issues

Possible developments

- Occupation: is *Makro* wrongly decided?

- Charities: can one occupation be for charitable and non-charitable (revenue raising) purposes?

- Section 45A: “when next in use” = when next in occupation?

- Legislative reform
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