

# 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

# An empty warehouse...





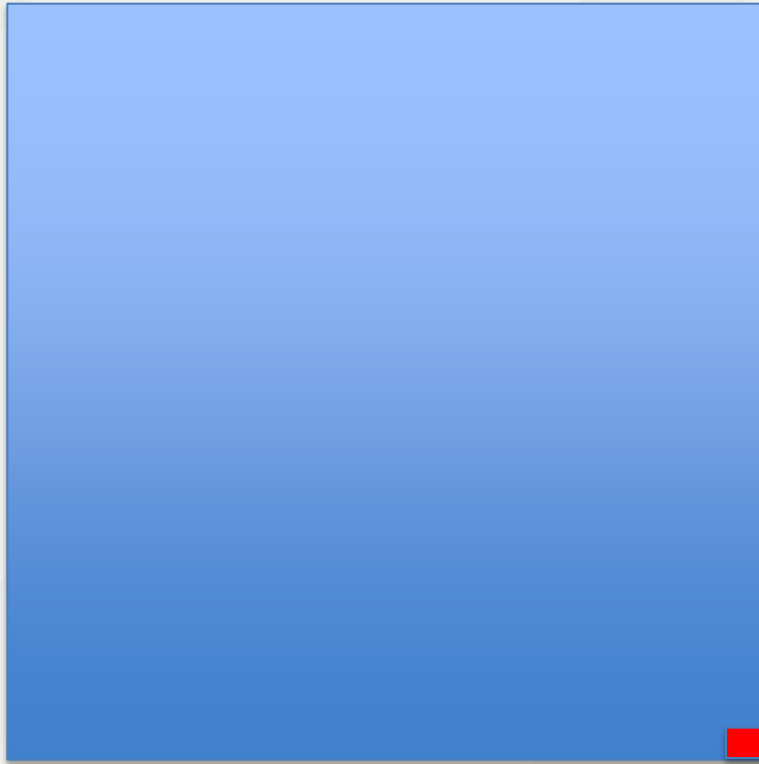
# Rates Avoidance

*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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