

Business Rates avoidance – discussion paper

February 2015

1. The Local Government Association (LGA) welcomes the chance to comment on the discussion paper on business rates avoidance.
2. The LGA is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services.
3. This response has been agreed by lead members of the LGA's Resources Board.

Introduction

4. In our response to the 2014 discussion paper on the administration of business rates in England we called for more action to be taken against business rates avoidance. The government's commitment to tackling business rates avoidance is welcome and the LGA will continue to work with CLG and HMT through the business rates anti-avoidance working group to understand the type and scale of business rates avoidance and to identify and evaluate means of closing any loopholes.
5. Last year, in conjunction with the Treasury and DCLG, we sent a questionnaire to authorities on the incidence and nature of business rates avoidance. This response draws on the findings of this questionnaire¹.

Methods of avoidance

Which methods of avoidance are you familiar with and how commonly have you seen them used? What do you consider to be the defining features of specific methods of avoidance?

6. The business rates anti-avoidance working group identified six specific methods of avoidance. In the questionnaire that we issued last year respondents were asked about how frequently they came across the methods and what proportion of estimated losses were accounted for by each method:
 - a) *Repeated short term periods of occupation (minimum reoccupation period is 6 weeks) of six weeks or slightly more, resulting in a further period of exemption from empty property rates.*

¹ Please see annex for further details of questionnaire.

This was by far the most common method of avoidance. 91% of authorities which gave estimates for amounts lost due to different methods mentioned this and it accounted for 47% of estimated avoidance losses. However many mentioned that recent case law, notably the Makro case in Nuneaton, has not been helpful.

- b) *The occupation of vacant properties, for example retail warehouses or shops, by charities. Occupation of a property is often minimal (such as posters in a window, or Bluetooth broadcasting). In addition, the actual evidence of occupation may be limited. Goods may also be spread out to give the appearance of being wholly or mainly used for charitable purposes.*

This was the second most common form of avoidance. 57% mentioned it and it accounted for 19% of total losses. Recent case law, particularly that involving Milton Keynes, South Cambridgeshire and Chester and Cheshire West councils and the Public Safety Charitable Trust, now in liquidation, has involved this.

- c) *The vacant property being leased to a charity and it is proposed that when next in use the property will be wholly or mainly used for charitable purposes. However, when questioned the charities do not have clear plans for occupation or intended use and authorities may never be informed that the premises are occupied, which leaves authorities uncertain as to whether the relief is appropriate or not.*

This was mentioned by 47% of respondents and accounted for 11% of estimated total losses.

- d) *Insolvency to avoid paying empty property rates, the power to disclaim onerous leasehold interests is available to both liquidators and trustees in bankruptcy but is not perceived to have been exercised by them in a timely or expeditious manner.*

This was mentioned by 40% of respondents and accounted for 13% of losses. Councils report that this frequently involves the same ratepayers. Although the Insolvency Service has tightened up recently it is still perceived to be a problem.

- e) *Avoidance as a result of properties not being on the rating list.*

15% of respondents mentioned this; it accounted for 8% of losses.

- f) *Creation of new hereditaments through splits and mergers to gain additional empty property rate relief.*

Although this was perceived to be comparatively rare (11% of respondent authorities; 1% of losses) authorities mentioned that it has been driven by recent extensions in small business relief.

- g) *Other methods mentioned by respondents include:*

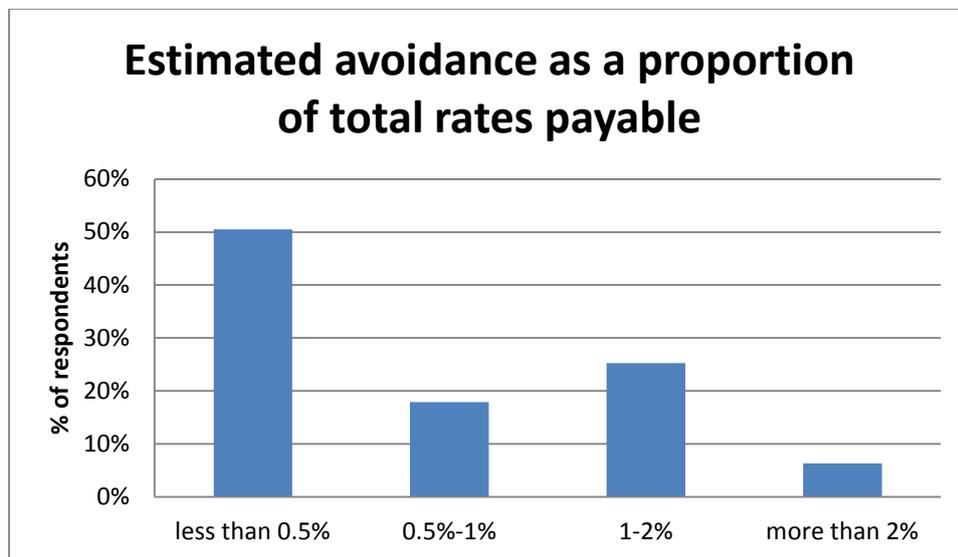
- Where a property is let to a limited company, which then sub-lets it to another company on a short term agreement. These sub-agreements are to companies that are registered with

Companies House but the registered addresses are mostly derelict buildings or large blocks of flats and therefore it is not possible to trace these companies and recover rates payable. The companies usually are struck off the Companies House list within 12 months of having left the rated property. The same applies to many public houses which are run by relief managers who are made liable for business rates by the pub owners. The owners claim not to have any contact details for their relief managers once they have left. The shops and pubs involved are usually in town centres, with high rateable values and high rates payable. One authority which reported this type of avoidance lost in excess of £650,000 in 2013/14.

- Bogus occupiers and avoidance through incomplete details of ratepayers with noted increase in 'phoenix' type companies.
- Companies registered abroad that own empty properties. If they don't pay the empty rate charges there is a limited chance of recovery.
- 'Sham' tenancies; cases where a tenancy is created with a company that has no intention of occupying the property. This company may have been recently formed, have a sole director, has no assets and does not trade. As a result, any enforcement action that a council takes is unsuccessful.
- Avoidance due to the misuse of agricultural exemptions. One specific example given by respondents to the survey is snail farms claiming the agricultural exemption. The LGA has also heard of cases where farms lease buildings to industrial and commercial ratepayers without informing the VOA or the relevant local authority.
- Properties which have been given a zero rateable value by the Valuation Office Agency due to redevelopment, however once the VOA has reduced the RV, the work on the property ceases. One authority reports a considerable number of properties which have had a zero RV for greater than 12 months.
- An organised pattern of occupation of vacant High Street shops by pop up companies selling low value goods such as mobile phone accessories or clothing and often a combination of these. The registered office of the company and home addresses of the directors are fictitious.

Scale of avoidance

7. Respondents to the survey were asked for their estimate of the total scale of avoidance. If you take those that responded as a proportion of their total business rates payable the estimate is around 1%. This is equivalent to around £230 million when grossed up to an England level. The chart overleaf shows how this breaks down; it can be seen that those estimating over 2% were a minority.



Tackling avoidance

What are your views on giving local authorities general or more specific anti-avoidance powers, whereby authorities can withhold reliefs and exemptions where they reasonably conclude that the main purpose or one of the main purposes of the ratepayer's occupation or arrangements is to receive the relief or exemption and/or that the arrangements or occupation is contrived or artificial?

8. One way of tackling avoidance would be to give local authorities a general power to take action in response to avoidance. Giving authorities specific powers to deal with particular instances of avoidance, such as those described above, would risk closing a number of loopholes only to see others open up in response.

What changes could be made to legislation that sets out which types of ratepayers or properties are eligible for exemptions or reliefs, to make it easier for authorities to distinguish between ratepayers legitimately entitled to reliefs or exemptions and those seeking to abuse them?

9. We agree that changes as part of the business rates administrative review could help in avoidance. For example, authorities have told us that one of the reasons that they find it difficult to take effective action against misuse of the 6 or 12 weeks exemption for empty property is that ratepayers are under no obligation to tell them. A similar point applies to misuse of the agricultural exemption. A legally enforceable obligation to report changes, and effective data sharing powers between authorities and the Valuation Office Agency, as envisaged in the parallel consultation on business rates administration would be a key measure to enable this to be tackled effectively.
10. Another proposal is that the occupancy criterion for qualification for a further period of business rates exemption should be increased to either three months or six months from the current 42 days.

Do you have any views on what changes could be made to the administration of reliefs and exemptions that would help prevent or tackle business rates avoidance?

11. Some respondents to the survey suggested that the wording on the relief for next use for charities where there is reference to 'intention to use' should be tightened up. As the regulations stand there is too much scope for charities to (sometimes unwittingly) become embroiled in rate avoidance without knowing the potential consequences when the rate avoidance is challenged.

What are your experiences in taking action against those avoiding business rates?

12. The following experiences were reported by respondents to the survey:
- a) "Where we have resisted allowing an exemption, the enforcement remedies available to us are not appropriate for recovering rates from a charity. One particular case of ours has been under investigation by the Charities Commission since June 2012 with no conclusion. The charity concerned owes us £43,000 and many other authorities around the country similar sums. The benefits to the owners of the properties is immense."
 - b) "We have had dealings with charities becoming involved in assisting rate avoidance in return for donations/funding – several had been brought to the attention of the Charities Commission and investigations have been under way (although this process has not yet reached any conclusions as far as we are aware)."
 - c) "We will always try to inspect a property - for example to determine if it is actually occupied for 42 days, to check if bluetooth is functioning, and we ask charitable organisations to fully explain why they have taken a lease of a large premises for unspecified future use. We are also mindful of the potential cost of taking legal action especially where the ratepayer is actually operating within the law and we are unlikely to be successful. I will report to the charities commission and / or the insolvency service where appropriate. It doesn't help that there are web sites actively promoting avoidance tactics."
 - d) "We have approximately 12 cases where a Landlord has granted a lease on a peppercorn rent to a Company that does not occupy the premises or occupies just for storage and does not pay either the occupied or empty charge. Liability Orders have been passed to the Enforcement Agent with no success. However, we have wound up one Company to bring an end to a 5 year lease to enable us to charge unoccupied rates to the Landlord. The total value in these cases is £300,000."
 - e) "Often we are faced with floors of office space with nothing more than 'pop up' tents or displays of art from sham businesses or charities; boxes of 'legal' documentation which are stored in the premises that ordinarily would be unsuitable for secure storage or

Bluetooth boxes with a minimum range of transmission. Often the companies behind these types of occupation will be established for the purpose of assisting ratepayers to reduce their rates liability.”

- f) “We have had some very limited success in combating occupation of vacant High Street shops by pop up companies by closely monitoring the properties and taking bailiff action as soon as legally permissible, although the amounts recovered are negligible. Over the course of a year this type of avoidance is costing hundreds of thousands of pounds.”

Do you have any views on what steps could be taken to help authorities come together to tackle attempted business rates avoidance?

13. Authorities have worked successfully together in some of the cases mentioned. The LGA would be happy to explore working with partnerships of authorities particularly on information sharing.

Do you have any alternative suggestions as to how to tackle business rates avoidance?

14. One issue raised by a number of respondents is the use by Government Departments of rating agents in order to reduce liability. It has been suggested that central government should set an example in this respect.
15. A number of avoidance methods spring from the fact that to be liable to pay business rates a property must be capable of beneficial occupation. We would look to the structural review of business rates to bring forward proposals to reform it.
16. We look forward to continuing to work with HM Treasury and the DCLG officials on this important matter, and to the reforms outlined in the consultation document being brought forward as soon as possible.

Annex: Response to questionnaire

The questionnaire was sent to all billing authorities.

We received a response from 35 per cent of single and lower tier councils and the response rates by council type and region are below.

| Response rate by council type | | | |
|-------------------------------|------------|------------|------------|
| Type | Pop | Responses | Per cent |
| District (D) | 201 | 59 | 29% |
| Metropolitan district (MD) | 36 | 17 | 47% |
| London borough (LB) | 33 | 17 | 52% |
| Unitary authority (UA) | 56 | 20 | 36% |
| Total | 326 | 113 | 35% |

| Response rate by region | | | |
|-------------------------|------------|------------|------------|
| Region | Pop | Responses | Per cent |
| E | 47 | 17 | 36% |
| EM | 40 | 6 | 15% |
| GL | 33 | 17 | 52% |
| NE | 12 | 4 | 33% |
| NW | 39 | 21 | 54% |
| SE | 67 | 22 | 33% |
| SW | 37 | 8 | 22% |
| WM | 30 | 10 | 33% |
| YH | 21 | 8 | 38% |
| Total | 326 | 113 | 35% |