Take stock of the recent rating cases

A flurry of recent decisions has shed light on the issue of liability for business rates

ON RATING

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Following *Makro Properties Ltd* v *Nuneaton & Bedworth Borough Council* [2012] PLSCS 150, there has been a series of other important decisions relating to business rates and, in particular, to empty property rates.

Makro, and the subsequent *Chiltern District Council* v *Principled Partnership and Heathcote Distribution Ltd* (unreported), established that empty property rate mitigation by way of "intermittent occupation" is a legal tactic and that only limited occupation is needed to qualify for a new "void" or rate-free period.

Rate liability in the spotlight...

Since then, cases coming before the courts have focused largely on occupation by charities for the purposes of empty rates mitigation. In *Kenya Aid Programme* v *Sheffield City Council* [2013] EWHC 54 (Admin); [2013] PLSCS 106, the court decided that two large industrial premises in Sheffield, which were partly used for the storage of furniture, were not "wholly or mainly used" for the purposes of the charity and, as a result, the ratepayer was not entitled to charitable relief.

The High Court has subsequently heard a series of joined cases – *Public Safety Charitable Trust* v *Milton Keynes Council and others* [2013] EWHC 1237 (Admin); [2013] PLSCS 103 – related to buildings in which PSCT had installed WiFi equipment that was used to broadcast messages on crime prevention and public safety. The High Court approved the test of charitable use set out in *Kenya* and said that the test "should depend upon the charity actually making extensive use of the premises for charitable purposes" in order to justify the application of charitable rate relief.

The latest case – *Sunderland City Council* v *Stirling Investment Properties LLP* [2013] EWHC 1413 (Admin); [2013] PLSCS 118 – concerned a warehouse property in which WiFi equipment had been installed and operated. The question was whether that use was sufficient to amount to rateable occupation and thus to trigger a new void or rate-free period when it ended. The court determined that the installation of the WiFi equipment was more than *de minimis* use of the premises and was thus sufficient to constitute rateable occupation. It also determined that the fact that the use of the premises (WiFi) was not related to the description in the rating list (warehouse and premises) was irrelevant in determining rateable occupation.

So where do these various cases leave ratepayers and billing authorities?

It is clear that the courts accept that rates mitigation schemes, operated within the law, are legal and proper practice. If billing authorities object to rates mitigation schemes, objections need to be expressed in legal and not "moral" terms. As the judge made clear in *Makro*, if Parliament considers the existing legislation to be in need of amendment, it is able to make such changes as it considers appropriate.

The classic tests of rateable occupation (that it must be actual, beneficial, exclusive, and not too transient) still apply. What is clear is that the actual occupation, in order to be rateable, need only be slight and need not be related to the purpose for which the property was constructed or has been adapted. Rates mitigation strategies that rely on a period of only slight use to trigger a new void or rate-free period, have consistently been supported by the courts.

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The tests applied by the courts distinguish significantly between the test of "occupation" to establish rateable occupation, which need only be very slight, and that of "use" to establish entitlement to charitable rate relief.

Entitlement to charitable rate relief is determined by section 45A of the Local Government Finance Act 1988 and requires that the premises be "wholly or mainly used for charitable purposes". In both *Kenya* and *PSCT*, the courts have adopted an "extent of use" test, which is a quantitative one. The test is not whether, of the use being made of the premises, the entire or main use is for charitable purposes, but rather whether the charity is actually making extensive use of the premises for charitable purposes. These different tests rely on the different wording of the sections of legislation concerned – "occupation" relating to rate liability, and "use" relating to entitlement to charitable rate relief.

While the hurdle to establish rateable occupation is set quite low, that to establish entitlement to charitable rate relief is set much higher and there is the likelihood of further litigation on the issue of entitlement to charitable rate relief. In particular, this could look at how premises may be "used" in the context of modern means of working. This is one of a number of ways in which the rating system, rooted deeply in terms of real property, is struggling to come to terms with the age of the digital economy and e-commerce.

... but don't forget other areas

With all the activity in the courts relating to rate liability and empty property rate mitigation, it would be easy to forget about *Woolway (VO)* v *Mazars LLP* [2013] EWCA Civ 368; [2013] PLSCS 73, an important case concerning the unit of assessment for rating purposes. The appeal related to two floors of offices, both occupied by accountant Mazars, in Tower Bridge House and concerned whether these two floors, located on the second and sixth floors of the building, should be assessed as one hereditament or two. The Upper Tribunal (Lands Chamber) determined that they were a single hereditament. The Valuation Officer (VO) appealed.

The Court of Appeal concluded that the President of the Upper Tribunal (Lands Chamber) was right to adopt a "common sense" approach in applying a physical or geographical test and not make a distinction between: (a) the floors in a building that are occupied together and contiguous; and (b) those that are occupied together, but are not contiguous.

However, the matter may not stop there. The VO was refused leave to appeal by the Court of Appeal, but on 22 May petitioned the Supreme Court for the same. It could be three months before it is known whether the VO will be granted leave to appeal. Until then, this important judgment remains in limbo.

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