



Department for
Communities and
Local Government



HM Treasury

Business Rates Avoidance

Discussion paper



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Foreword

The vast majority of ratepayers pay the business rates that they should pay. However, there are a small minority who avoid paying the business rates that are properly due. This imposes an unfair burden on the honest majority and prevents money from reaching the crucial public services that need it. We want to stop people exploiting the system and collect the amounts that are properly owed.

Unlike evasion, avoidance is not in itself illegal, but it involves exploiting business rates law to gain a financial advantage that Parliament did not intend. It frequently involves contrived, artificial arrangements that serve little or no purpose other than to reduce rates liability. And it enables some ratepayers to gain an unfair advantage, undermining confidence in the rates system.

We want to better understand the type and scale of business rates avoidance in England and to find ways to tackle business rates avoidance so that all ratepayers pay the business rates that they should pay.

We would like to hear views on how to achieve this from as many people as possible - ratepayers, their agents, their representatives, local authorities and the rating profession - in response to the questions posed in this paper.

David Gauke MP
Financial Secretary to the Treasury



Kris Hopkins MP
Parliamentary Under Secretary of
State for Communities and Local
Government



Introduction

- 1.1 The government is committed to tackling avoidance in the wider tax system. Since April 2010 the government has made 42 changes to tax law, closing down loopholes and introducing major reforms to the UK tax system. So for this Parliament, the government has already taken measures to tackle aggressive tax planning, avoidance and evasion adding up to £7.6 billion in additional revenues in 2015-16. Also at Autumn Statement 2013, the government announced that it would discuss with business, options for longer-term administrative reform of business rates after 2017. Over the past 12 months the government has opened up a wide ranging discussion with interested parties to seek ideas and potential solutions, including the publication of a business rates administrative reform discussion paper in April 2014. At Autumn Statement 2014 the government announced the publication of its interim findings of the business rates administration review; the interim findings were published on 10 December.
- 1.2 Throughout the first stage of the business rates administration review and in response to the discussion paper, numerous interested parties raised concerns about some ratepayers exploiting the business rates legislation to avoid paying business rates. Some interested parties said the government should take action to stop the abuse of rate reliefs for business rates avoidance. This in part stemmed from the impact on the public purse and the ability of local authorities to provide necessary public services against the backdrop of fiscal consolidation. Some authorities felt that billing and enforcement costs could be higher as a result of avoidance. Other interested parties also pointed out that avoidance was unfair to the vast majority of law abiding ratepayers.
- 1.3 During the last year a Department for Communities and Local Government led business rates anti-avoidance working group has also been working to understand the type and scale of business rates avoidance and to identify and evaluate means of closing any loopholes. The group has identified a range of methods of avoidance, some more common than others. The majority of the avoidance methods brought to the group's attention take advantage of specific reliefs and exemptions that have been put in place to support particular types of organisations, such as charities, or to support all ratepayers in certain circumstances, for example where properties are unoccupied. Some interested parties have also highlighted cases where properties do not appear on the ratings list or valuations do not reflect material changes of circumstance. It is apparent that there is a range of possible ways in which some ratepayers can exploit the system to avoid paying the business rates properly due. The government wants to widen the dialogue to better understand the methods being used to avoid rates.

- 1.4 In terms of scale of avoidance, the government is working with the Local Government Association to gather information about the scale of avoidance. Initial information suggests that the scale of avoidance varies between authorities. The government wants to add to this evidence in order more fully to understand the scale of avoidance across England.
- 1.5 This discussion paper is the next step in the process initiated by the working group. At this stage, the government is not proposing reforms; it is seeking information on types and scale of avoidance, ideas around potential solutions and a better understanding of the circumstances in which reliefs in particular are being used. This paper does not set out policy proposals but asks questions in order to frame a discussion.

Scope of the discussion

- 1.6 The government wishes to look at ways to tackle business rates avoidance, including the abuse of business rates reliefs and exemptions. However, the government is absolutely clear that it wants to continue to support law abiding ratepayers who are genuinely entitled to the reliefs and exemptions. Any possible changes to tackle avoidance would need to take account of the government's desire to support ratepayers that use the exemptions in the way that Parliament intended.

How to contribute to the discussion

- 1.7 The government is seeking ideas and views in response to the questions set out in this paper from ratepayers in all sectors, their agents, their representatives and from local authorities.
- 1.8 A team from across the Treasury and the Department for Communities and Local Government will consider written submissions and information provided by respondents. The team is also available to meet with respondents in order to gather a broad range of views and to discuss these issues in person.
- 1.9 Responses to this paper are requested by 28 February 2015 and should be sent by email to the team using the following title and address:

Title: Business rates avoidance discussion

Address: NDR@communities.gsi.gov.uk

Methods and Scale of Avoidance

Methods of avoidance

2.1 A Department for Communities and Local Government led anti-avoidance working group comprised of local authority representatives, the Valuation Office Agency and other ratings experts has suggested that there are a number of methods of avoidance. The most common methods of avoidance suggested appear to be:

- a) Avoidance of empty property rates through repeated periods of artificial/contrived occupation;
- b) Avoidance of empty property rates through artificial/ contrived occupation of properties by charities;
- c) Avoidance of empty property rates through artificial/ contrived arrangements where charities own a property and it appears that when next in use it will be mostly for charitable purposes;
- d) Avoidance of empty property rates through the use of insolvency exemptions.

2.2 Other less common methods of avoidance suggested appear to be:

- e) Avoidance of business rates by phoenix companies (businesses who trade for a short period of time, cease to trade and then re-open as a different company);
- f) Avoidance of business rates by failing to notify authorities of a change in circumstance;
- g) Avoidance of business rates through properties not appearing in the ratings list;
- h) Avoidance of empty property rates by making a property unoccupiable.

2.3 There may be a range of other possible methods of avoidance and the government is keen to hear about the full range of possible methods and to understand how frequently they are used. In addition, views vary as to what is considered to be avoidance and what is considered to be a legitimate use of a relief or exemption. The government is interested to hear those views.

2.4 It has been suggested that some second home owners seek to avoid their council tax liabilities by designating their properties as non-domestic, making them liable for business rates on which they then claim 100% small business rate relief. Rather than considering this issue as part of the business rates avoidance work, the government will explore the issues and potential solutions,

including through discussions with the Council Tax Partnership Forum. The government will also raise the issue for potential inclusion in the local government counter fraud strategy due to be published in March 2015 that will include, more broadly, council tax fraud.

Scale of avoidance

2.5 In 2013-14 the amount of empty property rates exemption given in England was £988million. In 2013-14 the amount of charitable rate relief given in England was £1.4billion. Some reliefs are likely to benefit properties that are not the intended beneficiaries. The government is working with the Local Government Association to gather information about the scale of avoidance. Initial information suggests that the scale of avoidance varies between authorities. The government wants to add to this evidence in order to more fully understand the scale of avoidance across England.

2.6 Questions on methods and scale of avoidance:

Methods and scale of avoidance

1. Which methods of avoidance are you familiar with and how commonly have you seen them used?
2. What do you consider to be the defining features of specific methods of avoidance?
3. What is your view on the scale of avoidance?

Tackling avoidance

- 3.1 The government wishes to look at ways to tackle business rates avoidance and prevent the abuse of reliefs and exemptions. However, the government will continue to support genuine businesses which legitimately claim rate relief to which they are entitled (e.g. charities). Any possible changes to tackle avoidance would need to take account of the government's desire to support ratepayers that use the exemptions in the way that Parliament intended.
- 3.2 Some interested parties, as part of the business rates administration review, suggested giving local authorities general or more specific anti-avoidance powers (similar to those used by HMRC), whereby authorities can withhold reliefs and exemptions where authorities can reasonably conclude that the main purpose 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. Ultimately the courts would judge whether that test was met. Specific anti-avoidance powers would target specific methods of avoidance whereas a general power could be more wide ranging. Effective use of such powers would require resource and expertise within local authorities and may create uncertainty for law abiding ratepayers. The government would like to hear views on this idea.
- 3.3 Other interested parties have suggested changes to the legislation, that sets out which types of ratepayers or properties are eligible for exemptions or reliefs, in order to make it easier for authorities to distinguish between rate payers legitimately entitled to reliefs or exemptions and those seeking to abuse them.
- 3.4 Responses to the business rates administration review discussion paper also suggested that an obligation on ratepayers to notify changes to the use or occupation of property might help – particularly where, at present, ratepayers make retrospective claims about periods of occupation. Other interested parties suggested that granting reliefs by application would help limit avoidance or by limiting backdating in certain circumstances. However, the government is mindful of the burdens of increasing administration for businesses so it would be helpful to hear views on these ideas. The business rates administration review interim findings sets out the government's plans to explore how the system of information gathering, use and sharing can be improved to support a better business rates system.
- 3.5 The government is aware of successful action taken to date by the Charity Commission, the Insolvency Service and a number of local authorities to tackle rates avoidance, such as a tax abuse scheme involving the installation of wifi devices¹. The government would like to hear about examples of other

¹ http://www.civilsociety.co.uk/finance/news/content/15705/high_court_winds_up_rate_relief_tax_avoidance_charity
<https://www.insolvencydirect.bis.gov.uk/piudb/viewpiucasedetails.asp?companyname=The%20Public%20Safety%20Charitable%20Trust%20Limited>

successful action to tackle avoidance, and would be interested to hear views on what contributed to their success. Also the government would be interested to hear about examples that were less successful and to understand reasons why.

- 3.6 The government also want to discuss whether steps could be taken to help authorities come together to challenge those ratepayers that may be attempting to avoid their rates liabilities through the use of reliefs or exemptions. Sometimes an authority may not be absolutely sure whether a particular ratepayer should be given a relief or exemption, especially where the arrangements or occupation appear to be contrived or artificial. In those situations, authorities may wish to share expertise and experience or may wish to join up and challenge particular cases in court. This may be particularly so where the costs of tackling cases at an individual authority level might outweigh the rates liabilities. It would be helpful to hear views on what barriers authorities face in tackling cases of suspected avoidance and what steps could be taken.
- 3.7 Many of these suggestions would require changes to either primary or secondary legislation. However, others such as bringing authorities together to tackle attempted avoidance could be achieved without legislation. It would be helpful to hear views on changes that could be achieved in the short term as well as those that may take longer to deliver.
- 3.8 Questions on tackling avoidance:

Tackling avoidance

4. 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?
5. 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?
6. 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?
7. What are your experiences in taking action against those avoiding business rates?
8. Do you have any views on what steps could be taken to help authorities come together to tackle attempted business rates avoidance?
9. Do you have any alternative suggestions as to how to tackle business rates avoidance?

Summary

Summary of questions:

Methods and scale of avoidance

1. Which methods of avoidance are you familiar with and how commonly have you seen them used?
2. What do you consider to be the defining features of specific methods of avoidance?
3. What is your view on the scale of avoidance?

Tackling avoidance

4. 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?
5. 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?
6. 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?
7. What are your experiences in taking action against those avoiding business rates?
8. Do you have any views on what steps could be taken to help authorities come together to tackle attempted business rates avoidance?
9. Do you have any alternative suggestions as to how to tackle business rates avoidance?

How to respond

- 4.1 The government is seeking ideas and views in response to the questions set out in this paper from ratepayers in all sectors, their agents, their representatives and from local authorities.
- 4.2 A team from across the Treasury and the Department for Communities and Local Government will consider written submissions and information provided by respondents. The team is also available to meet with respondents in order to gather a broad range of views and to discuss these issues in person.
- 4.3 Responses to this paper are requested by 28 February 2015 and should be sent by email to the team using the following title and address:

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