



Department for
Communities and
Local Government



HM Treasury

Business Rates Avoidance

Summary of Responses



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Summary of responses

Methods and scale of avoidance

Q1. Which methods of avoidance are you familiar with and how commonly have you seen them used?

This question attracted a very high level of comment. The majority of local authorities were aware of or came across more than one type of avoidance in their areas. A number of respondents also mentioned a specific method of avoidance in relation to pubs/ bars. The most common methods they were familiar with were those highlighted in the December 2014 discussion paper:

- 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.

Authorities suggested that use of the first avoidance method list above had increased since the ruling in the Makro Properties Limited v Nuneaton & Bedworth Borough Council case in 2012.

Business respondents suggested they were familiar with many of the avoidance methods. Many businesses suggested that there was a distinction between different methods of avoidance in that some methods were considered to be a flexible way to allow ratepayers to manage their liability for business rates, whereas others were aggressive avoidance scenarios. The distinction appeared to centre around the extent to which arrangements were contrived and whether third parties were involved.

Q2. What do you consider to be the defining features of specific methods of avoidance?

This question was mainly answered by local authorities and attracted both general and specific comments. The respondents who answered this question directly were focused on

the defining features of the most popular avoidance methods. It was suggested that the defining features of the avoidance of empty property rates through repeated periods of artificial/contrived occupation were: that the occupier sought to occupy the property as minimally as possible; and that the landlord and occupier entered into a tenancy agreement that required a very short notice period while the property is actively marketed. Another feature is that ratepayers notify the council retrospectively of occupation periods.

In cases where avoidance of empty property rates through artificial/ contrived occupation of properties by charities takes place, it was suggested that unsuitable premises (i.e. those that were overly large or located inconveniently) for the charity's purposes were often taken on. Also, it was suggested that charities are often unable to substantiate their claims of future use – on which the eligibility of a future relief depends - and occupation is minimal or infrequent. Some responses identified the use of insolvency exemptions to avoid rates, as highlighted by the discussion paper. One of the more general comments was that agents are often involved in advising occupiers on artificial or contrived arrangements for the purposes of avoidance.

Q3. What is your view on the scale of avoidance?

The majority of local authorities felt that the scale of avoidance is growing. A number of local authorities expressed the view that it is difficult to assess accurately the level of avoidance although some of them provided estimates for their areas. The Local Government Association's initial estimates suggest around £230m per annum is lost to avoidance.

The majority of other types of respondents did not comment on this question. Nevertheless some representative bodies suggested that some local authorities may overestimate the involvement of certain organisation types in rates avoidance or that there isn't sufficient evidence on the scale of business rate avoidance. A few rating agents suggested that the scale of avoidance is either low or declining.

Tackling avoidance

Q4. 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?

This question attracted a high number of comments. Some local authorities were in favour of the government providing them with greater powers (either through specific or general anti-avoidance rules) although a mix of local authorities and rating agents were opposed.

Those opposed claimed that sufficient, clear and well established powers, statutory mechanisms and rules already exist. It was suggested that granting specific anti-avoidance powers could lead to differences in interpretation of the legislation by local authorities, causing more cases to be taken to the courts, which in turn would cause resource and funding problems to local authorities. Local authorities who were in favour of these powers felt that legislation would need to be developed so that they clearly define the responsibilities of the parties involved and set out potential consequences for the ratepayer.

Q5. 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?

This question attracted a wide variety of comments and the majority of them suggested that legislation should be tighter, clearer and more prescriptive. Some respondents suggested defining the occupation of a property as a percentage of the utilised floor space; or extending the length of time an occupier is required to occupy a property in order to qualify for a relief; or placing a cap on the number of times that an exemption for an empty property can be claimed. Others suggested removing/reducing some reliefs or exempting properties below a certain rateable value threshold could reduce abuse of reliefs. It was also suggested that the Insolvency Service and the Charity Commission should use their powers more effectively or be given more powers. A few respondents suggested that there is no need for any change in the legislation.

Q6. 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?

This question attracted a range of comments, the majority from local authorities. The respondents mentioned that limiting backdating for retrospective claims and a more formal application process would make the granting of reliefs a more transparent process. In addition to this, better training could be given to those tasked with considering applications for exemptions and reliefs from ratepayers. Another suggestion was that local authorities should have the right to inspect the interior of empty properties before any relief is granted and that ratepayers should be obliged to notify local authorities of any changes in terms of occupancy. It was also suggested that reliefs should be discretionary so local authorities could set their own criteria.

It was suggested by a high number of respondents that ratepayers should be able to dispute their business rates liability at a Valuation Tribunal rather than a Magistrates'

Court. This would ensure rates continued to be paid whilst ratepayers disputed their liability.

Q7. What are your experiences in taking action against those avoiding business rates?

The majority of responses came from local authorities who mentioned that they have experience of taking avoidance cases to court. The main comment was that doing so places a considerable burden and cost on the local authority in terms of the work involved, such as carrying out property inspections and gathering evidence, which was seen as a significant barrier to taking legal action. In contrast, it was suggested that those involved in avoidance schemes were incentivised to take legal action and legal advice because the gains to be made from successfully avoiding business rates were sufficiently high.

Q8. Do you have any views on what steps could be taken to help authorities come together to tackle attempted business rates avoidance?

The majority of the respondents suggested that a centralised information sharing portal where local authorities could share experiences and solutions would be helpful and provide more consistency to the way they tackle avoidance. Others requested further financial support from the government such as a funding scheme that would help local authorities take joint action in order to cover legal costs.

Some identified the need for two-way data and information sharing between local authorities, the VOA and other public bodies to help strengthen attempts to tackle avoidance. While others called for guidance for local authorities on gathering evidence of avoidance, on what is expected of the council's inspectors, on the legal issues involved in tackling avoidance, and on best practices. It was suggested that local authorities could act proactively by withholding reliefs and exemptions.

Q9. Do you have any alternative suggestions as to how to tackle business rates avoidance?

This question attracted a range of views, the majority of them from local authorities. It was suggested that increasing awareness of avoidance schemes and improvement of understanding of the rules around business rate reliefs are the best methods available to the government to reduce tax avoidance by charitable vehicles. Closer co-operation with HMRC could enable ratepayers to report any new avoidance schemes more easily. Another suggestion was that the responsibility of paying business rates could be placed on the freeholder so that the local authority would be able to recover the charges against the

property. In general the need for improved communication channels between local authorities, the Charity Commission and Companies House was highlighted.

List of respondents

The following is a full list of respondents to the discussion paper:

Altus UK LLP	Cherwell District Council
Association of Convenience Stores	Cheshire East Council
Association of Licenced Multiple Retailers	Cheshire West and Chester Council
Baker Davidson Thomas	City of Lincoln and North Kesteven Council
Basingstoke and Deane Borough Council	City of York Council
BCH Developments Limited	Colliers International UK
Birmingham City Council	Commercial Development Projects Limited
Blackburn with Darwen Borough Council	Crawley Borough Council
Blackpool Council	Derwent Lodge Estates Limited
BNP Paribas Real Estate	Distribution Supplies Limited
Borough Council of Wellingborough	District Councils' Network
Boston Borough Council	Dudley MBC
Bracknell Forest Borough Council	Dunlop Heywood
Bradford Metropolitan District Council	Durham County Council
Braintree District Council	East Herts Council
Brent Council	East Lindsey District Council
Brighton and Hove City Council	East Riding of Yorkshire Council
British Property Federation	Federation of Small Businesses
British Retail Consortium	Fifield Glyn Ltd
Cannock Chase District Council and Stafford Borough Council	Fylde Council
Capital Space Ltd	GL Hearn Limited
CBRE Ltd	Greater Manchester Non-Domestic Rating Benchmarking Group
Centreland	Gravesham Borough Council
Charity Law Association	

Hatfield White	M&M Property Asset Management LLP on behalf of Shopping Centre Director Iain Minto
Hertfordshire County Council	
Institute of Revenues Rating and Valuation	MUA Property Services Ltd
Islington Council	National Council for Voluntary Organisations, Charity Retail Association, Charity Finance Group and Institute of Fundraising
Kent authorities	
Kingston upon Hull City Council	Newcastle City Council
Knowsley Metropolitan Borough Council	North Somerset Council
Lancaster City Council	Northampton Borough Council
Leeds City Council	Nottingham City Council
Leicester City Council	Oxford City Councils
Leicestershire Partnership (Harborough District , Hinckley & Bosworth Borough and North West Leicestershire District Councils)	Pendle Borough Council
Liberata	Preston City Council
Lingwood Estates PLC	Rating Surveyors Association
Local Government Association	Reigate Banstead Borough Council
London Borough of Bexley	Ribble Valley Borough Council
London Borough of Ealing	Rossendale Borough Council
London Borough of Enfield	Royal Borough of Kingston upon Thames
London Borough of Merton	Royal Institution of Chartered Surveyors
London Borough of Sutton	Rushcliffe Borough Council
London Borough of Tower Hamlets	Sefton Council
London Borough of Waltham Forest	Shared Revenues Partnership and the Anglia Revenues Partnership
Mettam Ware	Sheffield City Council
Milton Keynes Council	Slough Borough Council
	Solihull Metropolitan Borough Council
	South Cambridgeshire District Council

South Holland District Council
South Kesteven District Council
South Norfolk Council
South Northamptonshire Council
South Tyneside Council
St Helens Council
Stockport Metropolitan Borough Councils
Stoke-on-Trent City Council
Stockton-on-Tees Borough Council
Sunderland City Council
Tameside Metropolitan Borough Council
Telford and Wrekin Council
Thurrock Council
Tonbridge & Malling Borough Council
Trafford Council
Urban Splash
Vail Williams LLP
Welwyn Hatfield Borough Council
West Lindsey District Council
Westminster City Council
WHR on behalf of a number of interested parties
Wilkin Chapman LLP
Wokingham Borough Council
Wolverhampton City Council
Wyre Council
6 individual respondents

