19 March 2020

Tax services

Business rates in the current uncertain environment

With the Government announcing stricter guidance on social distancing and working from home there will be a large number of businesses struggling to remain open or fully operational. Whilst this remains the case the fixed occupancy cost of commercial property will put a significant strain on businesses.

In addition to the announcements set out in the budget on 11 March the Chancellor has now provided extended business rates relief for all retail, hospitality and leisure properties meaning that no rates will be payable for 12 months from 1 April 2020 regardless of the level of Rateable Value. In addition, there are also grants available for smaller businesses of between £10k and £25k. Although the full details of this are yet to be provided this is a significant financial package to those qualifying businesses.

These new relief measures do not however apply to those businesses outside of the qualifying criteria set out in the Government's guidance outlined above.

For those businesses who do not benefit from the new relief measures early consideration is recommended as to whether any of the following mechanisms already available in the business rates system will provide any relief or support from business rates.

Empty rates relief

Where property falls empty for up to a period of three months (offices, retail, leisure, hospitality) or six months (industrial) then full rates relief can be claimed. However, a property which is simply not being occupied but could be re-occupied at any point might not be granted the relief as the local authority may not classify this is 'empty'. Guidance should therefore be sought to ascertain whether this relief is applicable and the likelihood of it being granted.

In a normal operating environment, different local authorities can have various criteria for what constitutes the property being classified as empty. The criteria will very much depend on the property's use and sector but can determine whether any relief is ultimately granted. We are however not in a normal operating environment and how the local authorities will deal with specific circumstances as they unfold is hard to predict. But ultimately if a business does not apply it will not be granted any relief.

Building a better working world

It is also worth noting, even for those properties qualifying for the relief scheme, if properties remain empty for a period in excess of three months full rates may become payable. Landlords should also be aware that properties falling empty will be liable for full rates after any empty rates relief have been exhausted.

Partial occupation relief

Where a property is not being fully occupied or utilised then partial relief can be claimed on the areas not classified as being occupied. This type of relief is granted at the discretion of the local authority and will likely require supporting evidence.

This type of relief can vary depending upon the sector/use of the property and will be impacted by individual circumstances. Again, guidance should be sought to appraise the circumstances and to what extend this relief could be applicable. Applications for this type of relief typically require supporting evidence such as floor plans, photos and reasoned narrative for the partial occupation together with anticipated time frames. This information could be difficult to provide in such a fast-moving and uncertain environment and how local authorities will react to applications of this nature as a direct result of COVID-19 is unclear at this stage. Again, no relief will be granted without an application.

Prohibited by law

In the event the Government do implement a formal shutdown of certain properties or sectors then full rates relief will be applicable where the occupation of the property is prohibited by law. But businesses will still likely need to make an application particularly in those sectors not covered by the recent relief measures in the retail, hospitality and leisure sectors.

Hardship relief

It is possible to apply for some degree of rates relief if the occupier would be in financial difficulties without it and that the granting of the relief is in the interest of local people. Again, this relief is at the discretion of the individual local authority and with the anticipated level of relief applications that will be submitted, satisfying the second criteria is likely to significantly limit those who benefit. The granting of this relief isn't typically widespread, however there could be more scope to apply for this as the impact of COVID-19 unfolds.

Administrations

Where a company is placed into administration any empty property is not liable for the payment of rates. However, an administrator is liable to pay business rates where property is being used (for example, where a company in administration continues to trade from the property).

What if the business stops paying?

Normally where a business ceases to pay rates whilst still having an ongoing liability on the property they will be subject to court summons and additional costs. Further non-payment can then result in the sums being referred to enforcement agents, again with more costs and the potential removal of goods or equipment from the property. With the new rates year approaching on 1 April it is conceivable many businesses will not be able to meet the business rates liabilities on their properties, particularly if they are unable to trade or operate. As a result, there is no precedent for potential non-payment on this scale and it is hard to anticipate how this would be managed by local authorities.

Those business benefitting from the new relief measures are expected to receive new bills in the coming weeks. Local authorities are also in the process of cancelling direct debits, however qualifying businesses paying rates via direct debit should consider cancelling these themselves to avoid payments being unduly taken and entering into a potentially lengthy refund process.

Material change of circumstance

A more medium-term rates reduction strategy may be available by contesting the Rateable Value of the property as a result of a material change in circumstance affecting the property. This is a very technical and complex are of business rates. As a result, any such a challenge would have to clearly demonstrate that there has been a physical change to the property or locality impacting the rental value of the property. Purely economic changes themselves cannot be reflected as these are set at the valuation date.

It is therefore important to seek specialist rates advice on any circumstance that may fall into this category as correctly framing the reasons for contesting the Rateable Value will ultimately dictate the success of any challenge.

Contesting Rateable Value(s)

Although not a measure as a direct result of the COVID-19 impact businesses should still consider whether there is any merit in contesting the valuation used for the underlying tax calculation.

The last business rates revaluation came into effect on 1 April 2017. Therefore, where these valuations (or Rateable Values) are inaccurate there is the potential for three years' worth of backdated savings. It is then anticipated that the next business rates revaluation will be effective from 1 April 2021 after which the ability to achieve any backdated benefit to 2017 will be lost. As a result, there is only a year left to appraise and contest any inaccurate Rateable Values after which four years' worth of fixed cost cannot be reviewed.

It is recommended that the above measures should be reviewed and where applicable actioned at the earliest opportunity. Some of the areas outlined including discretionary rates relief applications and material changes of circumstance challenges cannot be carried out retrospectively. Given the speed with which current environment is moving seeking advice is recommended to ensure where any relief is relevant it can be claimed within the appropriate period.

Further information

For further information, please contact one of the following or your usual EY contact:

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