

'Effects of the abolition of empty rates on the corporate occupier'

With thanks to Adrian Rose, director of Atis Real for the following article.

From April 2008 the abolition of empty rates on buildings will start to have a dramatic effect on corporate occupiers. However, the situation is not completely straight forward.

The changes to empty rates relief are as follows:

	Before 1 st April 2008	After 1 April 2008
Industrial	100% Relief	6 months rates free holiday then full rates
Retails	3 months rates free holiday then 50% rates	3 months rates free holiday then full rates
Offices	3 months rates free holiday then 50% rates	3 months rates free holiday then full rates

The corporate occupier is often faced with surplus property that they cannot dispose of. Up to now, empty rates, particularly from industrial property where there has been 100% relief, has reduced the holding costs of empty property. From 1st April 2008, the holding costs will increase with full rates on vacant properties, and these costs can straight away.

The rates holiday starts from the date of vacation. If the vacant property has already had the rates holiday, you will pay full rates from 1st April.

What should the Corporate Occupier do to reduce the increased rates burden on empty properties?

Firstly, all vacant property needs to be reviewed and subject to a rates review. In order for a property to be in the rating list, it needs to be capable of beneficial occupation. So you should ask: Is the property capable of beneficial occupation?

This is referring to the physical state of the property. Could it be argued that the property fails the economic test and would be uneconomical to repair? This may be the case for many run down city centre office blocks where demand has been 'sucked away' and they are no longer economically viable to repair.

Industrial property may also be incapable of beneficial occupation if in a poor state of repair. The government has deferred making regulations to deal with potential tactics to avoid empty property rates. The government has said that it will monitor any incidences of avoidance and has stated that it will be prepared to use its new powers to address such activity if the evidence suggests it is necessary.

At the moment, removing the roof from industrial property or 'constructive vandalism' to make the property uneconomic to repair are permissible options.

A property can be deemed to be incapable of beneficial occupation and therefore not rateable, if it does not comply with the necessary statutory legislation.

For example, if it has an asbestos problem, it may not be legal to occupy the building and therefore the property should not be assessed. Also, if it has an inadequate means of escape in case of fire, Section 34 of the London Building (amendment) Act 1939, provides that in the absence of a fire certificate a building shall not be occupied.

The government has confirmed two other exemptions:

1. The existing permanent exemption from rates for empty Listed buildings has been retained.
2. A new permanent exemption from empty rates for companies in administration has been introduced.

Finally, and most importantly, if your property is rateable, check the rateable value. It may not have been looked at for years, especially if it is a vacant industrial property, as no rates would have been payable.

How will my rates liability be affected if my property is only partly occupied?

If a property is only partly occupied, the billing authority has discretion to request that the valuation officer apportions the property's rateable value between its occupied parts.

At present the empty property rate applies to the empty part of an apportioned building and the occupied business rate applies to the occupied part.

From the 1st April 2008, as a consequence of the reforms to empty property relief, the empty part will receive a complete exemption from rates for the first 3 months it is empty (or, if it is an industrial property, for the first 6 months). After the initial rate-free period expires, in most cases the apportionment will cease to have effect and the occupied rate will apply to the whole property. However, if the property would qualify for an exemption when empty (e.g. Listed building) the apportionment will continue and there will be no liability for rates on the empty part.

The current regulation state that a property has to be occupied for a period of at least six weeks before it is entitled to the rates holiday, if vacated. There is therefore the potential to occupy a vacant property for six weeks after the 1st April 2008 at no additional rates costs and then to vacate and obtain the three to six months rates holiday (depending on whether the property is a shop/office or industrial). In theory this cycle of occupation for a minimum of six weeks then rates then occupation could be continued indefinitely.