POLICY NOTE

THE NON-DOMESTIC RATING (UNOCCUPIED PROPERTY) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/51

The following Regulations are made in exercise of powers conferred on the Scottish Ministers by sections 24(2) and (3) and 24A(4) of the Local Government (Scotland) Act 1966 and all other powers enabling them to do so. The Regulations are subject to the negative procedure and come into force on 1 April 2022.

Purpose

These Regulations amend the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 and require local authorities to consider whether certain criteria are present before 100% empty property rates relief is awarded in circumstances where the ratepayer is a company or limited liability partnership that is being wound-up or has entered liquidation, whether compulsorily (ordered by the court) or voluntarily under the Insolvency Act 1986.

The amendments only apply to those properties which are let under a lease agreement, and which have become unoccupied on or after 1 April 2022 and within the period of 6 months beginning with the date on which the property first became occupied under the lease agreement. In addition, at least one of three further indicators connected to reduction or mitigation of rates liability must also be established:

- the rent charged for the lands and heritages is significantly below the level of the rent which could reasonably have been obtained at the time the lease was entered into, in all the circumstances;
- payment of the rent is optional in terms of the relevant lease;
- the purpose of the arrangement is identified in the lease as being for the purpose of mitigating rates liability.

Where the amendments apply, the conditions relating to 100% relief in the event of winding-up or liquidation are to be treated as not applying. Accordingly, rates will be payable at the other level for empty properties, namely 50% for three months after the property becomes unoccupied, then 10% relief if non-industrial, or 100% relief for 6 months then 10% relief if industrial.

Policy Objective

The Scottish Government is committed to a fair and transparent non-domestic rates system that is not undermined by avoidance tactics. One such identified tactic of non-domestic rates avoidance involves the use of insolvency measures in order benefit from empty property rates relief, which means that a ratepayer's liability is reduced to nil. The Programme for Government 2021-22 made a commitment to help local authorities tackle this known avoidance tactic on empty non-domestic properties, by delivering measures for local authorities in advance of the devolution of empty property relief on 1 April 2023.

These Regulations will, from 1 April 2022, require local authorities to consider whether certain specific criteria are present, before awarding 100% empty property rates relief where the ratepayer has entered insolvency, compulsorily (by the court) or voluntarily, shortly after occupation. Where these crteria are present, the conditions relating to insvolvency are to be treated as not applying. There will, therefore, be no award of 100% relief.

As one of the characteristics of rates avoidance via the use of empty property relief is that the insolvency process is entered into very shortly after the signing of a new lease agreement, the first criterion that must be established in all circumstances to restrict relief is that the property has become unoccupied because the ratepayer has entered insolvency, compulsorily (ordered by the court) or voluntarily, within a period of six months from the date that the lease was entered into.

In addition, at least one of three further indicators connected to reduction or mitigation of rates liability must also be present. The additional indicators are as follows:

- the rent charged for the lands and heritages is significantly below the level of the rent which could reasonably have been obtained at the time the lease was entered into, in all the circumstances;
- payment of the rent is optional in terms of the relevant lease;
- the purpose of the arrangement is identified in the lease as being for the purpose of mitigating rates liability.

The first additional indicator will enable the local authority to have regard to the broader circumstances in which the lease agreement was entered into in their assessment. It may, for example, take account of a drop in local rental values for new lets. In situations where the relevant criteria are met, the effect will be that the other rules on rates liability for empty properties will apply (i.e. 50% liability for empty property, rising to 90% after 3 months; and for industrial properties which are empty no rates for the first six months, followed by 90% liability thereafter).

The purpose of the indicators is to ensure that empty property rates relief is still available to cater for situations of genuine insolvency, but restricts its application to exclude those that may seek to use it as a means to mitigate the non-domestic rates liability on the property. Furthermore, the Regulations do not affect the ability of a rating authority to design and put in place a scheme for any empty property in its area, or reduce the liability of an individual property, through a community empowerment relief under powers contained in section 3A of the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Empty property relief will be devolved to local authorities in April 2023, and thereafter relief for unoccupied property will only be available at the full discretion of a local authority through local relief powers.

The consideration of the conditions relating to empty property rates relief in circumstances of insolvency and winding-up will only be applicable where the property becomes unoccupied on or after 1 April 2022, as a result of insolvency. It will have no application to situations involving ongoing non-occupation through insolvency, at the time the Regulations come into force.

Consultation

Scottish Ministers have consulted such persons as they consider appropriate, namely local authorities and the Institute of Revenue Rating and Valuation.

Impact Assessments

No Business and Regulatory Impact Assessment is required.

Financial Implications

The instrument has no direct financial implications.

Scottish Government
Local Government and Communities Directorate
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