

Real Estate briefing

Empty business rates and charity lettings

Before April 2008, owners of unoccupied commercial properties had a 50% reduction in their business rates liability. The abolition of this relief coincided with a decline in the number of potential tenants and, as a result, many commercial landlords have found themselves liable to pay full rates on an increasing number of empty properties.

One method of reducing rates liability which has proved increasingly popular is to let the property to a charity, for use as a shop, office or for advertising. A charity occupying property wholly or mainly for charitable purposes is entitled to at least 80% (and in many cases 100%) relief from business rates. The landlord makes a saving simply by granting the lease, as the rates liability passes to the charity, so landlords are willing to let the property at very low or zero rents, and may also make a donation to the charity: the total payment will still be less than the amount that the landlord would have had to pay in empty business rates.

However, there are a few issues which landlords and charities need to be aware of before they enter into a lease of this kind:

Length and terms of the lease

As this is primarily a cost saving measure for landlords, they don't want to tie themselves into a lengthy lease. As soon as they find a paying tenant they want to be able to terminate the agreement with the charity. Charities for their part need to ensure that they are not taking on greater liabilities than anticipated, for example with regards to repair and maintenance of the property.

Charity liability for business rates

Charities will want to ensure that their occupation gives them the business rates relief which they expect. The interpretation of occupation for "charitable purposes" is fairly narrow: case law makes it clear that, to qualify, the use of the property must be directly connected to the main purpose of the charity. Whether or not putting up posters in the window would qualify, either as occupation at all or specifically as occupation for "charitable purposes" has not been challenged, but there is anecdotal evidence that a significant number of local authorities are accepting this, perhaps in recognition that it is better than empty or demolished shops.

Landlords need to be aware of this issue to the extent that they provide an indemnity in the lease in respect of any business rates for which the charity becomes liable (and a well advised charity should request this).

Tax avoidance or tax evasion?

Finding a way to reduce liability for tax is completely legitimate, and letting a property to a charity with the accompanying benefit of removing business rates liability would appear to fall within this. However, a recent report in the Financial Times suggests that lettings of this kind are a scam and may amount to tax evasion. The Charity Commission is investigating but make the point that their concern is that the arrangements further the purposes of the charity, with any benefit to the landlord being incidental. It is difficult to see how the arrangements could be found to be anything other than beneficial to charities involved and the correct view must be that where charities are occupying wholly or mainly for charitable purposes the relief will continue to apply.

Whether any action is taken to prevent these lettings remains to be seen but landlords and charities should be aware of the issues. If there is a clamp down on these schemes it is unlikely that local authorities will find the alternatives any more attractive: a high street filled with empty, damaged or destroyed properties is not an appealing prospect.

Further information

If you have any questions about arrangement which you have in place, or are planning to put in place, please get in touch with your usual contact, or with any member of our real estate team.

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