A Guide to Business Rates

February 2011
REVISION HISTORY

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Date</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Initial Guidance</td>
<td>Feb 2011</td>
<td>Rod Urquhart</td>
</tr>
</tbody>
</table>
What are Business Rates

National Non Domestic Rates (NNDR) or Business Rates as they are also known are collected by the Council on behalf of Central Government from occupiers of non-domestic premises such as shops and businesses. The rates are pooled by central government and redistributed to local authorities as part of an annual formula grant settlement. This money, together with the income from council tax payers, the revenue support grant provided by the Government and certain other sums, is used to pay for the services provided by the Council.

What is the History of Rating

Forms of Rating can be identified for over a thousand years in this country but the more modern concept dates back to the 1601 Poor Relief Act of Elizabeth the First. It was then used to finance “poor houses”. It is now a principal source of funding for local authorities, which undertake a range of welfare services and also the maintenance of local services, including road maintenance, local lighting and refuse removal.

More recently The General Rate Act 1967 gave us General Rates which was a system of local taxation on domestic and non-domestic property based on rental values.

The Local Government Finance Act 1988 brought in the current system of Business Rates. However many parts of the Business rates system are covered by case law and not primary legislation or statutory instrument. Examples of this are the word hereditament. A hereditament is defined in law as anything that can be passed by an individual to heirs.

There are two types of hereditaments: corporeal and incorporeal.

a. A corporeal hereditament is a permanent tangible building,

b. An incorporeal hereditament is generally a right over land such as sporting rights.

In order to be rated, the ratepayer and property (hereditament) have to pass several tests that have been defined in case law:-

There has to be:-

a. Actual occupation

b. Exclusive occupation for the particular purpose of the occupier

c. Beneficial occupation – there must be an economic advantage

d. The occupation must not be too transient.

Who has to Pay

Business Rates are usually payable by the occupier but in some cases such as empty premises the owner or leaseholder may be liable.

If you have entered into an inclusive rent and rates agreement with the owner or landlord of the property or you only occupy part of some business premises please contact the Business Rates section for more advice as it is normally the occupier who is liable and a private agreement is not binding in law.
Rateable Value

Apart from premises that are exempt each non domestic property has a rateable value that is set by the Valuation Office Agency (VOA), an executive agency of Her Majesty’s Revenue & Customs (HMRC). The VOA draws up and maintains a list of rateable values which you can check on their website [www.voa.gov.uk](http://www.voa.gov.uk).

The Rateable value of your premises is shown on the front of the bill. This broadly represents the yearly rent the property could have been let for on the open market on a particular date. For the revaluation that came into effect on 1st April 2010, this date was set as 1st April 2008. The valuation officer may alter the value if the circumstances of the premises have changed. The ratepayer (and certain others who have an interest in the property) can also appeal against the value shown in the list if they believe it is wrong.

National Non Domestic Multiplier

The Council works out the Business Rates bill by multiplying the Rateable value of the premises by the appropriate multiplier. There are two multipliers; the standard non-domestic rating multiplier and the small business non-domestic rating multiplier. The former is higher to pay for small business rate relief. The Government sets the multipliers for each financial year for the whole of England.

The multipliers change each year in line with inflation and to take account of the total cost of small business rate relief. In the year of a revaluation, the multipliers are set at a level which will keep the total amount raised in rates, after the revaluation, the same as before, plus inflation for that year. The current multipliers are shown on the front of your rates bill.

Transitional Arrangements

Property values normally change a good deal between each revaluation. Transitional arrangements help to phase in the effects of these changes by limiting increases in bills. To help pay for the limits on increases in bills, there also have to be limits on reductions in bills. Under the transition scheme, limits continue to apply to yearly increases and decreases until the full amount is due (Rateable value times the appropriate multiplier).

The scheme applies only to the bill based on a property at the time of the revaluation. If there are any changes to the property after 1st April 2010, transitional arrangements will not normally apply to the part of a bill that relates to any increase in Rateable value due to those changes. Any transitional adjustments are shown on your rates bill.

Empty Properties
Business Rates are not payable for the first three months that a property is empty provided the property was previously occupied for a minimum of six weeks. This is extended to six months in the case of certain industrial properties. After this period, rates are payable in full unless the unoccupied property rate has been reduced by the Government by order. In most cases the unoccupied property rate is zero for properties owned by charities and Community Amateur Sports Clubs. In addition there are a number of exemptions from the empty rate. Such as …

- Where the Rateable Value is < £2,600
- Where the previous occupier has gone into Liquidation
- Where the previous occupier has gone into Bankruptcy
- Where the previous occupier is deceased and the property is part of an estate
- Where occupation is prohibited by Law eg Asbestos

**Partially Occupied Premises**

If the business is only using part of the premises for which you are liable, it may be able to claim a rate relief known as Section44a Relief.

Where the unoccupied part of the premises is likely to remain empty for a long period of time (e.g. over a year), it may be possible to apply to the Valuation Office Agency (VOA) for a division of the rating assessment, thereby creating two or more separate assessments.

If the premises are partly occupied temporarily, it is not always possible or necessary for the Valuation Officer to create two separate assessments in the Rating List. For example, where the occupier of a warehouse reduces the amount of storage because of a recession, or where a company phases its removal from one property to another, it may not be appropriate to have the Rating List amended because the circumstances are not permanent.

If the Occupier wished to apply to the Council for relief under Section 44A of the Local Government Finance Act 1988 should do so in writing as soon as the property becomes partly occupied. An inspection of the premises would then be undertaken to validate the application.

**Small Business Rate Relief (SBRR)**
Small Business Rate Relief is only available to ratepayers who apply to the Council and who occupy either

a) a single property with a Rateable value of less than £18,000 or

b) a main property and other additional properties providing those additional properties each have a Rateable value of less than £2,599 and the aggregate Rateable value of all premises does not exceed £18,000

If the Rateable value or aggregate Rateable value increases above these levels, Small Business Rate Relief will cease from the day of the increase.

Ratepayers who satisfy these conditions will have the bill for their single or main property calculated using the lower small business non-domestic rating multiplier rather than the ordinary non-domestic rating multiplier that is used to calculate the liability of other businesses.

In addition, if the single or main property is shown on the rating list with a Rateable value of up to £11,999, the ratepayer will receive a percentage reduction in their rates bill for this property of up to a maximum of 50% for a property with a Rateable value of not more than £6,000.

The Amounts of Relief available were changed for the period 1\textsuperscript{st} October 2010 to 30\textsuperscript{th} September 2011. This doubled the amount of relief to any properties receiving relief & whose Rateable value was < £12,000.

If an application for relief is granted, provided the ratepayer’s circumstances do not change, the application will not need to be renewed until the next revaluation of non-domestic premises, which happens every five years.

There are certain changes in circumstances you will need to notify the Council of. The changes which must be notified to the Council are:

- If the occupier takes occupation of a property it did not occupy at the time of making your application for Small Business Rate Relief; in these cases the occupier will need to make a new application for relief

- If the occupier has an increase in the Rateable value of premises occupied by it in an area other than the area of the local authority which granted the relief.
If the occupier has a general store or post office which has a rateable value of £8,500 or less and it is situated in a settlement with a population of less than 3,000 people appearing in the rural settlement list for the district or borough you will be entitled to 50 per cent Mandatory Rate Relief.

The Village Shop Rate Relief scheme also provides 50 per cent mandatory relief to all food shops with a rateable value of less than £8,500 in designated rural areas and if the occupier has a public house or petrol filling station in the rural settlement list for the Council, it is entitled to 50 per cent mandatory relief if its rateable value is £12,500 or less.

**Community Amateur Sports Clubs (CASCS)**

All Community Amateur Sports Clubs registered with Her Majesty’s Revenues & Customs (HMRC) Sports Club Unit are entitled to 80 per cent Mandatory Rate Relief.

**Charitable & Discretionary Relief**

A registered charity or an organisation which clearly demonstrates Charitable Purpose, as per the Charities Act 2006, is automatically entitled to 80% relief from the full rates bill on any non-domestic property that is wholly or mainly used for charitable purposes. A further reduction of the remaining 20% may be made at the discretion of the Council known as top up discretionary relief.

The authority also have discretion to remit up to 100% of any rate bill in respect of a property occupied by certain non-profit making organisations e.g. sports clubs, educational or philanthropic organisations. This is known as Discretionary Relief.

**Hardship Relief**

In certain circumstances the Council has the authority to reduce Business Rates where ratepayers are experiencing hardship.

Because any hardship relief awarded comes out of the Council’s own funds, we have a duty to council tax payers to ensure that the application is well founded, and that should the business be facing closure due to financial hardship, the closure of the business would have a detrimental effect on an area. It should also be a short term measure.

Write offs under hardship are very much the exception rather than the rule.

**Ways to Pay**
Business Rates are payable in 10 monthly instalments from April to January. The dates that payments need to be made are shown on the bill, but are usually the 1st of each month. In certain circumstances arrangement may be made to pay at different intervals. The original payment dates are set by each individual council.

There are a number of ways NNDR can generally be paid and most authorities have set up the following.

Direct Debit - Paying by Direct Debit is by far the easiest and most convenient way to pay Business Rates. It is the cheapest method of payment for local authorities.

- Internet Payments by Credit or Debit Card
- Payment card at the Post Offices banks or other outlets e.g. PayPoint
- Payment at banks, building Societies and the Post Office
- By, cheque, card or standing orders.
- Telephone Payments.

Recovering Unpaid Business Rates

Reminder/ Final/ Summons
A bill would be issued which in most cases a business rate payer would elect to pay by monthly instalments although other options are available i.e. half yearly or in a lump sum.

Monthly reminder notices are generated for those business payers who fall behind with their instalments and these show the amounts they need to pay to bring their payments up to date. If they fail to bring their payments up to date within the timescale allowed, a summons would be issued in the Magistrates’ Court for any balance outstanding, plus costs.

If the business ratepayer brings their payments up to date but defaults on a second occasion a final reminder will be issued. Again failure to bring payments up to date will result in a summons being issued.

At each stage it is generally accepted that the business ratepayer may make an arrangement on any outstanding balance but any default of this arrangement would result in the issue of a summons.
**Liability Order**

Following the issue of a summons if the business ratepayer does not pay in full before the court hearing date the authority may make an application for a Liability Order together with costs.

Once the local authority has obtained a Liability Order this gives them various options to recover the debt

- The business ratepayer can make an arrangement with the authority to clear the debt.
- The local authority can forward the details of the debt to a bailiff for collection. The business ratepayer would be responsible for any charges made by the bailiffs in respect of the debt.
- Commence proceedings to make the business ratepayer bankrupt. The local authority can apply to the County Court for a petition to make the business ratepayer bankrupt.
- If the business ratepayer is a limited or public limited company the authority can commence proceedings to have the company wound up (leading to Liquidation). The necessary action for this would be taken in the County Court
- Committal to Prison

**Committal to Prison**

If an account has been returned by the bailiffs unexecuted “insufficient goods on which to distrain” or the ratepayer cannot be traced the only option for local authority is either committal or bankruptcy proceedings by issuing a summons to the ratepayer if they are a sole trader or in partnership. For Limited companies it will be necessary to go for distress or commence proceedings to liquidate the company. The ratepayer will be required to attend at the Magistrates Court to explain why they should not be committed to prison in default of the outstanding balance. At the hearing the Magistrates will conduct an enquiry into the means of debtor which could result in any of the following: -

- Immediate Committal
- Suspended Committal coupled with an order for payment
- Adjourn the case coupled with an order for payment
- Adjourn the case for a probation report
- Remit either part or all of the debt

The debtor may have contacted the authority prior to the hearing and made an arrangement to pay. These cases may be withdrawn by the authority but reinstated if the debtor fails to keep to the arrangement. If the debtor fails to attend at the hearing the authority will make an application for warrants of arrest to be issued by the Court either with or without bail.
Mandatory Write Offs

Certain circumstances exist where it would be normal and reasonable to automatically consider a debt for write off irrespective of the size of the debt.

Bankruptcy
Upon notification from the trustee in bankruptcy or official receiver the local authority will complete a proof of debt covering all outstanding charges up to the date of the bankruptcy. Once a claim has been submitted the account(s) should be coded appropriately and submitted for write off. In the case were more than one person is liable for the debt action will be taken against the other liable person for any monies due.
This type of debt ranks as an unsecured debt and it is unlikely that any payment will be forthcoming from the trustee in bankruptcy. If full or part payment is received any amounts already written off will be written back on to the accounts.

Individual Voluntary Arrangement.
This is an alternative course of action available to an individual wishing to avoid the restrictions made by a bankruptcy order. It involves the debtor making an offer to all creditors that is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If creditors holding at least 75% of the total debts agree to the offer, the Arrangement is approved and affects all creditors notified prior to its approval. An insolvency practitioner then manages the arrangement until the payments agreed have been made. There is no discretion to be included in such an order once it has been agreed. If the debtor fails to keep to the agreement made in the order any of his creditors can subsequently petition for their bankruptcy.

Liquidation / Company Wound Up / Company Struck off
Upon notification from the official receiver or agent acting on behalf of the official receiver the authority should file with the official receiver or agent a proof of debt form of all monies outstanding to the date of the liquidation. Once a claim has been submitted the account(s) should be appropriately coded and submitted for write off.
This type of debt ranks as an unsecured debt and it is unlikely that any payment will be forthcoming from the official receiver or agent. If full or part payment is received any amounts already written off will be written back on to the accounts.

Statute Barred
Certain debts will fall outside of legal jurisdiction either because the debtor may have left the country or 6 years may have elapsed since the debt was incurred and recovery action has not already been taken.
Cases of this type are rare but where they do occur legal action cannot be taken to recover the debt so they will be recommended for write off.

Remitted by the Magistrates
At a committal hearing the Magistrates may remit part or all of the debt if they feel it would be unreasonable to expect the Ratepayer to make payment. In such a case there is no alternative but to write off the amount remitted.

Debt Relief Order
Where the value of a Ratepayer’s total debts are < £15,000 a debt relief order can be used instead of Bankruptcy. This is normally instigated by the debtor via the Insolvency Service. As with Bankruptcy any Business Rates debt is unsecured & unlikely to be paid.
Discretionary Write Offs

In addition to the circumstances where the Council is legally prevented from taking action to pursue the recovery of monies due, there will be instances where recovery cannot be enforced because either:

- The debtor cannot be traced,
- it is uneconomical to collect the debt, because of its low value, or
- The Ratepayers personal circumstances mean that to make payment would cause unreasonable hardship.

Absconded

These are cases when the debtor has absconded and attempts to trace them have been unsuccessful. Under such circumstances there is little alternative but to write off the debt. This clears the accounts of irrecoverable debts and allows resources to focus on those debts that can be recovered.

Before a debt can be considered for write off the following procedures will be carried out:

- Check the Council Tax and Benefits database to see if the person (sole trader or director) has re-registered at another address within the district.
- Check the Business Rates database to see if they are registered anywhere else within the district.
- If the property had been leased / rented, check with any landlord or letting agent for a forwarding address.
- If a Limited Company check Companies House and a credit checking agency e.g. Experian, Equifax for details of the company i.e. names and addresses of directors and position regarding the status of the company.
- Have the property inspected / make enquiries at neighbouring properties

Deceased

When a debtor dies leaving outstanding debts but there are no monies available from the estate, the debts will be treated as irrecoverable and put forward for write off. In these cases the solicitors acting for executors will be approached for payment before any recommendation is made to write off the debt.