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ALL CHANGE ON BUSINESS RATES

The last two years have brought challenging times for ratepayers and there is little respite on the horizon. With the 2017 revaluation, rateable values are increasing substantially throughout large swathes of the country and the high street is in the front line.

According to Richard New, a real estate litigation partner at Eversheds LLP, ratepayers pay roughly half of what the Valuation Office assess to be the market rental value for each commercial property they occupy, whether or not they own the freehold or the leasehold of that property.

The last rating list was based on 2008 rental values and the impending revaluation came into effect on 1 April 2017, with rental values being assessed as of April 2015.

New says the 2008-2015 period was an especially volatile period for the property market. "However," he adds, "many cities were over the worst of the downturn and had started to accelerate by 2015 so have seen sizeable increases in their rateable values."

The Valuation Office published the new rateable values in draft late last year and is inviting representations from ratepayers as to any factual or other substantial errors. New advises ratepayers to instruct a RICS qualified rating surveyor to see whether there is any scope for challenge. "The list went live on 1 April 2017 and ratepayers can now appeal their assessments formally, but a new system was brought into effect which will influence which battles ratepayers wish to pick." He says that the Valuation Office is hoping that the introduction of the Check Challenge Appeal process will reduce the number of frivolous claims and lead to more challenges being settled in the early stages, with fewer appeals being heard before the Valuation Tribunal. Under the old regime it was felt that too many appeals are being put in speculatively with little chance of success.

"In essence," says New, "the changes to the appeal process should prompt ratepayers to be more diligent in their appointment of trusted, well- respected advisors because the process will now be more paper-heavy and forensic from the outset."

Check Challenge Appeal places greater emphasis on the ratepayer ensuring that the appeal is well-founded. "Ratepayers will need to 'frontload' more than they currently do for the appeal process, both in terms of assessing opportunities and accumulating evidence," says New. He warns that except for physical changes to the property or its locality, the ratepayer will only get one chance to appeal.

Under the first step of the new regime, Check, the sides will agree factual evidence regarding the property concerned. "The ratepayer will be responsible for the accurate presentation of information regarding the property and the Valuation Office will reassess whether an amendment is merited," says New. He warns though, if ratepayers present false information they may find themselves fined.

Challenge follows if Check leads to no amendment. New says ratepayers should expect to state the detailed grounds for the alteration and provide evidence in support. “This might be market data or legal or factual representations which support a change to the rateable value. There will then be a period for negotiation.”

With, Appeal, it is likely that limited evidence can be brought in front of the Valuation Tribunal except for that disclosed during the Challenge phase. This is why New says that there is a real need for comprehensive thought to have gone into the submissions made at an early stage of an appeal. He notes that rather like an employment tribunal claim, those wanting to take an appeal to a hearing will have to pay a £300 fee.

“What is interesting about Check Challenge Appeal,” says New, “is that it will undoubtedly put more onus on ratepayers, both in terms of time and money they spend on preparing its appeals and in compliance with time limits.” He explains that if ratepayers fail to submit evidence by certain deadlines then their appeals will be terminated instantly, but how this will operate in practice is still open to speculation. “This would seem to be unreasonable given that the Valuation Office is recommending that it has 12 months to deal with the Check phase and 18 months in which to deal with the Challenge, so the prospect of an early decision is questionable.” It’s also important to note that the appeal can lead to a rise in the rates and not necessarily a reduction.

The lesson is clear. Businesses must make a point of checking their business rates valuation. If they feel that they have a genuine case to make they should engage an appropriate RICS qualified rating surveyor (see ricsfirms.com) and put together their case for an appeal. They only have one bite of the cherry and so the case needs to be well researched.

BUDGET AND THE CHANCELLOR

In his March 2017 Budget, the Chancellor bowed to pressure to help those businesses most adversely hit by the April 2017 rates revaluation. “We cannot abolish business rates as they will fund local government,” Mr Hammond said, noting that he wants to find a way of taxing the digital economy. He added: “We will set out our preferred approach in due course”.

In the meantime, the Chancellor promised to cap business rate rises at £50 a month for those leaving small business rate relief (currently set at £12,000 in value but rising to £15,000 from April). There is also to be a £300m discretionary relief fund made available to local authorities to tackle other rates- related issues in their local areas.

Overall, Hammond reckons that his announcements equate to a £435m cut in business rates.

Why UK’s property tax reform is a step backwards

Current tax rules, developed over the past 200 years, are out of touch with the reality of today, but the government adding layer upon layer of new tax rules is not helpful either, writes Ceris Gardner

The Oxford English Dictionary may have decided its word of the year for 2016 was ‘post-truth’ (an Orwellian idea and an ugly word), but for lawyers and tax professionals another hideous word has entered the lexicon: ‘de-enveloping’.

‘De-enveloping’ was a term coined by the government in 2013, with the introduction of ATED (the annual tax on properties held, or ‘enveloped’, by companies), and wrongly suggested — then as now — that there was an unsavoury whiff of artificiality about these arrangements. Since 2015, with the announcement that inheritance tax will also be visited on properties held by companies, ‘de-enveloping’ has acquired new currency. It is thought that around 100,000 properties in the UK are owned by foreign companies, and the process of alerting their owners to the change, and extracting the properties from the companies, has not been made simpler by the fact that draft legislation (of only some of the rules) was first published in December, leaving just four months to arrange many complex transactions.

As we know, the past five years have been marked by an unprecedented wave of reforms to the taxation of UK residential property. A major target of these reforms has been non-UK investors using corporate structures to purchase and hold high-value residential property. It has until now been common for non-UK investors to invest in UK residential property via a foreign company. The government became determined that this was being used to avoid stamp duty land tax: a future purchaser would have the opportunity to purchase the company, rather than the property, and thereby escape the SDLT that would be payable on a direct acquisition of the property. Not so, the professions replied en masse to a consultation. Clients tend not to buy second-hand companies (because of the risks of buying an unknown history), but form new ones to buy the properties, paying full rates of SDLT. They do it for confidentiality reasons, and because owning a foreign company is outside the scope of inheritance tax. This self-administered application of shot to foot led directly to the introduction of ATED in 2013 — supposedly to compensate the Treasury for the loss of opportunity to impose IHT on these properties — and now to the imposition of IHT on the properties (without ATED being repealed).

The government has declared that 'the current rules… developed over the past 200 years, are complex and poorly understood, and do not reflect the reality of today's more integrated world'. It's hard to disagree, but adding layer upon layer of new tax rules helps no one.

Taxing immovable assets at 40 per cent on death is a very 19th-century way to address a modern-day problem. It is harder to tax Bitcoin, or the UK-source profits of Starbucks, than the bricks and mortar of a wealthy family; and it is hard to escape the conclusion that successive governments would rather risk the goodwill of wealthy foreign families than that of global corporations. Post-Brexit, you might imagine we would want the goodwill of both.

All this reminds me of the observation by Sellar and Yeatman, in 1066 and All That, that while Gladstone had spent his declining years trying to guess the answer to the Irish Question, whenever he was getting warm the Irish secretly changed the question. Similarly (or so it feels), whenever tax advisers think they have understood and adapted to the government's latest approach to the taxation of non-domiciliaries, the government simply changes its target.

Which brings me back to de-enveloping and residential property. It is ironic that the very 'problem' the government set out to curtail in 2012 — the imagined sale of property-owning companies free of SDLT — is still possible. As SDLT rates have sky-rocketed over the past fifteen months, the intentionally punitive rate of 15 per cent SDLT for companies buying property has also been imposed on anyone buying a second home (or buy-to-let) worth £1.5 million or more. The potential to buy a company, rather than the property, and the consequent saving may outweigh the risk of buying the company's history; and although ATED applies to second homes, it does not to buy-to-lets; and finally, inheritance tax is the same whether the property is held in a company or personal names. So for some investors, there is no real disincentive to using a company. Ironically, the government's piecemeal policy-making has created a market which didn't exist.

The post-truth version of all this probably merely states that wealthy people ought to 'contribute their fair share to society'. But for a homeowner who doesn't live in the UK, it's hard to see why giving the British state 40 per cent of his house when he dies is a fair bargain.

Is it time to tax land value uplift for community benefit?

The uplift in land value has been taxed at rates from 100% in 1947 to zero today. A sensible level of taxation could help fund social infrastructure and affordable housing.

Will Self's '70 Years of Planning History', broadcast on Radio 4 on Sunday 25 March, was a timely reminder of how to think big. Drawn up by the post-war Labour government, the 1947 Town and Country Planning Act was a ground-breaking piece of legislation that brought in many radical new ideas.

The main focus of the broadcast was the introduction of the Green Belt, but it touched on other measures too. The Act established that landowners would require permission to develop or change the use of land from a newly created 'Central Land Board' (CLB). Until then, and astonishing though it may seem, individual landowners had enjoyed an 'immediate right' to develop.

Tax on the land value uplift was levied at 100%. As the landowner couldn't profit from the sale, there was no incentive to bring land forward

To manage the new planning system, the 1947 Act reorganised the 1,400 existing county and borough councils to form 145 new local authorities and required each to prepare a comprehensive development plan.
They were empowered to develop themselves, use compulsory purchase orders to buy land and lease it to private developers, and given powers to control outdoor advertising and preserve woodland and buildings of architectural or historic interest.

The Act also made provision for extensive government grants to help authorities develop. Treasury undertook to pay 50-80% of the annual cost for at least the first five years; 90% in areas of significant war damage. The grants were due to continue at a lower rate (but still 50% in war-damaged areas) for 60 years. Local authorities were also given the power to borrow (with a 60 year payback period), and other grants were available for related expenditure, such as the cost of acquiring land outside the main redevelopment areas.

For me, the really interesting bit is that the Act required 'development value' to be 'vested in the state'. Developers could only buy land at its existing-use value, and when permission to develop was granted, they were subject to a 'betterment charge', based on the difference between the initial price and the final value of the land. These charges were officially assessed by the new CLB but local district valuers were expected to work with developers to agree a fair value. If a landowner refused to sell land at the 'undeveloped' price, it could be compulsorily purchased by the CLB – if development was refused, the landowner was entitled to compensation from a special £300 million fund.

If you're thinking this all sounds too good to be true, you're not far wrong. It is true – but had a number of fundamental flaws. The most obvious was the tax on the land value uplift was levied at 100%. As the landowner couldn't profit from the sale, there was no incentive to bring land forward. Compulsory purchase was rarely used and most landowners simply sat it out and waited for a change of government. Records also suggest that the rules were very complicated and the regulations unclear. Because valuations were based on predicted rather than realised value the few landowners that did bring land forward did so at an inflated price.

In 1951, just three years after the Act came into force, the new Conservative government repealed its financial provisions. Labour didn't return to power until 1964 when it introduced the Land Commission Act of 1967, whose aims were 'to secure that the right land is available at the right time for the implementation of national, regional and local plans', and 'to secure that a substantial part of the development value created by the community is returned to the community and that the burden of the cost of land for essential purposes is reduced'. It also reinstated a 'Betterment Levy'; this time set at 40% and intended to rise over time. Although this led to a quick surge in development before the Act came into force, it often amounted to digging a token trench. The market then became uncertain and landowners once again hedged their bets; 40% was still a substantial sum to give away.

No doubt you've spotted the emerging pattern here… The Conservatives regained power in 1970 and abolished the Land Commission and the Betterment Levy. Plans to introduce a 'land hoarding tax', a penalty for failing to proceed with development after receiving planning permission was never implemented and the housing market collapsed in 1973.

Labour had one more go. The Community Land Act 1975 sought to empower communities to control development 'to meet its needs and priorities', and the 'Development Land Tax' imposed a levy of 80% on the actual rather than the predicted value uplift. Four years later, the Conservatives reduced the rate to 60%, and the tax was finally withdrawn in 1985.

Somewhere between 0% and 100% lies a sensible way to capture a useful proportion of value uplift without deterring land from coming forward

This account of ill-considered reform and party political ping-pong is all the more depressing because the underlying principles remain sound today. If the goal is to reduce the cost of housing it makes sense to focus on those who make the most money from the least amount of work. That's usually still the private landowner, and profits are rising. Recent reports suggest that land value now accounts for up to 70% of development cost.

Somewhere between 0% and 100% lies a sensible way to capture a useful proportion of value uplift without deterring land from coming forward. It may be closer to 20-25%, and it probably needs to increase year on year, perhaps 1% above land inflation, to incentivise release sooner rather than later. But it will also need cross-party consensus if it's to stand any chance of success. Without that, landowners will simply play the waiting game.

Shelter's new report, 'New Civic Housebuilding' explains the problems with the current speculative land market extremely well. It stresses the importance of setting clear quality objectives and sticking to them, and suggests that new development vehicles, such as Development Corporations, '…should be given powers of land acquisition and assembly (including CPO) and act as 'master developer'; giving landowners the opportunity to invest their land as equity, putting in basic infrastructure, and selling serviced plots to local builders, housing associations, self-builders, Build to Rent providers and others'.

Capturing land value uplift, making standards non-negotiable and setting up development corporations, for example to mastermind the new garden towns and villages, are mutually reinforcing strategies. These are the sort of bold ideas that the Housing White Paper should have put forward – and invited. On the whole, the consultation is merely seeking a mandate to explore some of the relatively modest measures put forward, but this doesn't prevent us from making a case for going further or suggesting something different. It’s important to make the most of opportunities like this; architects should be playing a much bigger role in policy-shaping because we see development, and the way that policy affects it, from all angles. It makes a difference too. Consultation responses are analysed and the outcomes reported; the back-tracking on Starter Homes, reflects a strong public backlash. The consultation on the Housing White Paper closes on 2 May.