



## Empty Rates - it's a matter of Principle

Empty rates continue to be a challenge for ratepayers who hold vacant properties. The leading case of Makro Self Service Wholesalers Limited v Nuneaton & Bedworth Borough Council remains the benchmark by which mitigation strategies are measured. Makro was advised in the High Court by Gareth Buckley, a Principal of Avison Young. If employed efficiently the principles held within that landmark case can reduce an empty rate liability by approximately 65% in the majority of instances and in the case of industrial or storage properties by up to 78% per annum.

Local Authorities continue to try to find ways to frustrate the strategy and so long as it is properly implemented then it should be accepted.

The strategy was recently endorsed by way of a recent judicial review which reaffirmed a ratepayer's right to manage his liability for the payment of empty rates by going into and out of occupation so as to generate successive periods of empty rate relief. In particular, the court considered the definition of "occupation" and confirmed that there was no concept within the meaning of the word requiring a "purpose

or motive" beyond that of occupation itself. Hitherto, some Billing Authorities had been endeavouring to argue that the motive behind most occupations was to avoid the payment of empty rates and therefore that in itself would not constitute rateable occupation for the purposes of demonstrating occupation.

It would therefore seem that in England the pendulum has swung back in favour of the ratepayer who adopts the "Makro Scheme". It is likely that Billing Authorities will now turn their attention to other rate avoidance schemes including charitable schemes, phoenix company schemes and liquidation schemes. A number of cases are pending in relation to these strategies.

The Scottish Government is presently consulting on the Barclay review which recommends some radical reforms to the Scottish Rate System. This includes anti avoidance rules to counter the Makro strategy, by requiring properties to be occupied for a minimum period of 6 months in order to generate successive periods of relief.

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The Welsh Government has just announced the outcome of a consultation paper on business rates avoidance. Amongst other things it too will change the period required for occupation from 42 days to six months before empty property rate relief is awarded on vacation. This will be implemented from 2021 to coincide with Revaluation.

Further details will follow any policy announcements.

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