

RATING

- OPPORTUNITIES IN 2010

by

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Tom Dixon has some 40 years professional experience and has always specialised in rating matters, including a number of appearances before the Lands Tribunal. After graduation from the College of Estate Management, held appointments at Gerald Eve, Jones Lang La Salle and Strutt & Parker. Spent 12 years in the Valuation Office Agency which he left as a Principal Valuer to join Landers (prior to its amalgamation with Sallmanns) in 1987. Appointed Partner in charge of the Rating Department in January 1988 and Managing Director of the restructured valuation practice in May 1991, which merged with Sanderson Weatherall in 2005.

He works extensively at national level, and is a co-ordinator for the rating of car auctions, health and fitness clubs, and public conveniences! Member of the National Valuation Forum, Valuation Office Professional Bodies Liaison Group, Joint Rating Group, Valuation Tribunal Service Advisory Group. Past President and Council Member of the IRRV; Past President and national committee member of the Rating Surveyors Association.

Contributed to the Owlion audio cassettes "Rating in the 1990's" and "The 1995 Rating Revaluation" for the RICS and the College of Estate Management, and has lectured extensively on various aspects of rating. Advised the governments of Bulgaria and Romania on the possible introduction of local property tax, and is author of "Business Rates – Your Guide", now in its 4th Edition. On the Law Society's List of Approved Expert Witnesses and is an accredited Mediator.

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Background

Rating has existed as a tax on the occupation of property since 1601. It was until 1990 locally set, by the Local Authority, and from 1948 locally assessed by the District Valuer's Office. Since 1990, the tax has been set at a single national rate and although billing authorities still collect the income, it is remitted to The Treasury for redistribution; and the Valuation Office Agency has now restructured, as a regional rather than a local operation.

The Revaluation Process

Since 1990, there have also been five yearly revaluations, each of them having an antecedent valuation date (AVD) setting the levels of value two years prior to the List coming into force. Thus for the 2010 Revaluation which came into effect on 1 April, the AVD is the 1st April 2008. Somewhat confusingly rateable values are calculated at levels of rental value as at 1st April 2008, but taking into account the physical circumstances at April 2010. The assessments cannot therefore reflect the general downturn in the economy, unless this is 'physically manifest', for instance by a significant increase in the vacancy rate of shop units in a retail location.

The 2010 Revaluation produced a total rateable value of £61.8bn derived from 1.8 million properties or hereditaments, which is anticipated to yield a tax take in 2010/11 of £23.4bn. It is not just the oldest form of taxation in the United Kingdom, but also one of the most significant.

It should be noted that although similar systems operate in Scotland, Wales and Northern Ireland, the actual regulations and tax regimes are somewhat different.

In common with previous Revaluations since 1990, the 2010 Rating List is subject to a transitional scheme, which phases in both increases and decreases in rate liability for up to 5 years.

Methodology

Broadly, there are three methods of valuation to obtain the rateable value, which equate to an estimated rental value from year to year on full repairing and insuring terms, assuming a willing landlord and tenant and that the property is vacant and to let. The majority of properties, including the bulk classes, which are offices, shops, factories and warehouses, are assessed on the rental method, using open market evidence of lease transactions at or around the antecedent valuation date. Where the type of property is not normally let on this basis, a receipts and expenditure basis is adopted where the business in the premises produces profit and loss accounts and the rent is derived as a proportion of adjusted net profit from that business operation. For those properties where there is no such transaction evidence, an estimated replacement cost is adopted, amortised at a prescribed statutory rate. Interestingly, in the circumstances of the 2010 Revaluation, both receipts and expenditure and estimated replacement cost or contractors methods, incorporate the potential to 'look forward' from the valuation date (AVD) to take account of anticipated future trends. However, this is less clear cut in the rentals methods which uses evidence at or around the antecedent valuation date, but generally excludes rents after that date. In Scotland, but not in England, Wales or Northern Ireland, a rental value below that at the antecedent valuation date can be treated as a material change generating a review of the assessment.

It is worth noting that a revaluation is not a means of increasing the Government's tax take and indeed the total rate bill for 2010/11 cannot by law exceed the amount for 2009/10 subject to any indexation, which for the first time this year was negative.

Liability to Rates on Empty Properties

Rates are calculated as a tax on the occupation of property, and as such were not levied on empty or vacant premises from 1601 until 1966, when limited liability on all except industrial and storage categories of property was introduced. However, in April 2008, one hundred per cent liability was introduced on virtually all hereditaments. This has led to very considerable hardship in many cases which, coupled with a marked reluctance by the Valuation Office to delete obsolescent or derelict properties from the Rating List, has generated a number of cases before the Valuation and Lands Tribunals.

Appeals Procedure

The right to challenge the levying of business rates is as old as the system itself, initially being conducted by the Parish Overseers through a variety of organisations such as the local assessment boards and the Local Valuation Court until the establishment of the Valuation Tribunal in 1988. This was constituted in a similar manner to a Magistrates Court with lay members and a technically qualified clerk. There were some 56 tribunal jurisdictions in England and a further 8 in Wales. In common with rent assessment committees, valuation tribunals were administered by the now Department for Communities and Local Government, but after the long gestation of The Leggatt Report, they were in fact excluded from the new two tier tribunal system, although the appellate jurisdiction to the Lands Tribunal transferred to the upper tier of the Land Chamber.

As a result of what appears to be a turf war between The Ministry of Justice and DCLG, the Valuation Tribunals in England (but not Wales) were restructured in legislation bolted on to the Local Government and Public Involvement in Health Act 2007, with a commencement order in 2008. This replaced the 56 jurisdictions with a single valuation tribunal for England with a single president, to which post an academic lawyer, Professor Graham Zellick, was appointed in January 2009. The Tribunal's jurisdiction was significantly altered by regulations which came into effect on 1st October 2009, although a number of these are now subject to a re-drafting; and these also provided for a series of practice directions by the President, which were also supposed to come into effect in October 2009, some of which are still the subject of discussion and, in some cases, extremely controversial negotiation. However, the bulk have been introduced with effect from the 23rd March, 2010.

In principle, the ratepayer's position has not changed in that he makes a proposal to alter the Rating List to the Valuation Officer who has a specified period, currently three months, in which to respond and resolve the issue in dispute, after which it automatically constitutes an appeal to the Valuation Tribunal.

Professor Zellick is determined to instil a far more detailed and rigorous framework into the appeals procedure which may well open up opportunities for lawyers, as the system will in many ways be similar to the civil procedure rules. They will also be beyond the capabilities not only of individual ratepayers, but advisers who are not generally familiar with legal formalities. The problem is that with the amounts of money involved in most appeals, significant incurring of costs is not warranted, and it is for this reason that traditionally surveyors have conducted appeals in the role of both Advocate and Expert Witness. Their difficulties in now doing so arise not only from the increased complexity and requirements for pre-hearing bundles of documentation and rules of evidence being sought by Professor Zellick, but also a significant change in the practice statements of The Royal Institution of Chartered Surveyors in relation to members acting as Expert Witness and also as Expert Witness and Advocate. These were strongly resisted by the rating surveyors, who were ultimately overridden so that a dual role is now considerably more difficult to establish. As an example, The Valuation Office Agency now often employs two surveyors on the same case, one as Expert Witness and the other as Advocate.

One of the problems with the rating jurisdiction is that the range of values covered and complexity is vast; Valuation Tribunals deal with everything from lock-up garages and advertising rights to the British Telecom Cumulo and the Channel Tunnel i.e. from airports to zoos.

In the past, the system has been self-regulating with higher rules of evidence and advocacy applying to the more complex cases including representation by Counsel and full exchange of documentation in accordance with the CPR rules. However, to seek to apply this regime to every appeal as Professor Zellick appears to be attempting to do, will enormously complicate the system, particularly as in common with other aspects of the court system, most appeals are resolved prior to the Hearing; less than 1% of rating appeals lodged end up being fully contested before a tribunal.

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