IPTI Xtracts

Property Tax and Assessment News from Around the World

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London retailers & other businesses face £2.8bn business rates bill next year

- 70,000 London shops, pubs, restaurants & hotels face £2.8bn business rates bill when the tax relief ends
- All business premises will return to normal business rates liabilities from April 1 next year
- The government has not yet indicated if it would provide targeted support or to extend the one-year business rates holiday

Almost 70,000 business premises across London face a combined business rates bill of £2.8 billion from next April without discerning targeted support, experts have warned.

Real estate advisory firm Altus Group said that with the one year business rates holiday set to end on March 31 next year, 66,374 business premises – including retailers – across London's 33 local council areas will return to normal business rates liabilities.

Altus Group said this would total £2.79 billion for the 2021/22 tax year, which begins April 1.

In March this year, just as the Covid-19 crisis started to grip the UK, Chancellor Rishi Sunak wrote off business rates bills for the current financial year in an attempt to negate the economic impact of the pandemic.

The one-year business rates holiday applied to all occupied retail, leisure and hospitality premises irrespective of their size.

However, the government has still not yet revealed if it would extend the business rates holiday or introduce measures that offer targeted support for worst-affected businesses.

“Whilst next April cannot signal a return to pre pandemic levels of property taxes it must strike a balance with public finance affordability,” Altus Group head of property tax Robert Hayton said.

“Adjusting rateable values used to calculate bills, for those properties under appeal, reflecting the profound effect of the pandemic in values ahead of new bills being issued next year is part of the solution which will need to be supplemented by additional targeted support to where it is most needed.”

Earlier this month, Altus Group projected that the UK’s Big 4 grocers – Tesco, Sainsbury’s, Asda and Morrisons – along with Aldi and Lidl will save around £1.87 billion in business rates tax breaks this year despite sales soaring during the pandemic.

This is set to represent more than one sixth of the total £10.1 billion business rates bill which has been written off for all businesses during the year.

Meanwhile, London Mayor Sadiq Khan has urged the government to extend the business rates holiday to provide a lifeline for the capital’s retailers.

Business rates subsidy covers just 7pc of Heathrow's £120m bill

Heathrow - which has lost its crown as Europe's busiest airport - is due to pay £120m in business rates this year

Heathrow has bemoaned a multimillion-pound subsidy from taxpayers that will cover just 7pc of its annual business rates bill.

Ministers handed grants to airports in England equivalent to their annual business rates bills, in the first sector-specific invention of the coronavirus crisis.

However, a decision to cap the subsidy at £8m per site means the support will only cover a fraction of larger airports’ overall bill.

Heathrow, which is taking legal action against the Treasury over its decision to scrap tax-free shopping, is the UK's biggest business rates payer with a bill of nearly £120m in the current year.

The £8m limit means the state support is less than a fifteenth - of Heathrow's business rates costs.

The airport said on Friday it planned to furlough its entire senior management team except its chief executive to cut costs.

Airports across England and Wales face business rates bills of more than £200m in 2020/21, according to property specialist Altus Group.

Gatwick is due to pay £29m in business rates this year, while Manchester and Stansted face bills of £14m and £12m respectively, experts said.

Leaders from the aviation industry, one of the hardest hit by the pandemic, have railed at business rates holidays handed to other sectors such as retail and hospitality. Supermarkets, which have remained open throughout the Covid restrictions, have received a £1.9bn tax break from the Treasury.

How capacity has been cut on the 20 busiest UK routes

Route	December 2019	December 2020
Heathrow-New York JFK	156,412	55,906
Heathrow-Dubai	121,911	81,184
Heathrow-Amsterdam	101,158	39,167
Heathrow-Dublin	96,987	24,406
Heathrow-Frankfurt	86,582	20,276
Heathrow-Doha	81,632	41,273
Heathrow-Madrid	80,061	28,588
Heathrow-Singapore	80,005	20,735
Heathrow-Los Angeles	79,178	23,392
Heathrow-Hong Kong	77,076	26,071
Gatwick-Dublin	72,279	11,718
Heathrow-Munich	71,527	12,034

Route	December 2019	December 2020
Heathrow-Paris CDG	70,437	24,490
Heathrow-Zurich	70,157	19,000
Heathrow-Abu Dhabi	68,548	27,861
Heathrow-Geneva	66,485	25,035
Manchester-Dublin	54,667	10,108
Heathrow-Istanbul	53,869	26,622
Heathrow-Miami	53,235	22,006
Heathrow-Toronto	53,110	19,086

The business rates relief came as Grant Shapps, the Transport Secretary, announced a “test and release” system to reduce a two-week travel quarantine down to five days from Dec 15.

A spokesman for Heathrow said: “While we welcome the Government’s recognition that airports have been devastated by Covid-19 and are struggling to survive under the burden of massive rates bills, today’s announcement doesn’t go far enough. The proposed reduction in business rates for Heathrow is only 7pc, compared to an 82pc reduction in passenger numbers.

"Small airports in England, and all airports in Scotland and Northern Ireland have had a 100pc waiver from business rates – even the big supermarkets, which are booming, have enjoyed 100pc waiver from business rates. The Government’s proposed approach is discriminatory against large airports, and we will now carefully consider our next steps.”

The funding is crucial for smaller regional airports, however.

Andrew Bell, chief executive of Regional & City Airports that owns Exeter and Bournemouth, said he was pleased the Government had listened to the industry's calls.

"The measures announced today will provide much-needed support and we will continue to lobby hard and work with Government on what other steps can be taken to safeguard the UK’s regional airports," he said.

Chancellor Rishi Sunak said: “The aviation industry is vital to our economy – creating jobs and driving growth- which is why we have supported them throughout this crisis through the job retention scheme, loans and tax deferrals.

“This new package of support for airports, alongside a new testing regime for international arrivals, will help the sector take off once again as we build back better from the pandemic.”

Karen Dee, chief executive of Airport Operators Association said the new measures will help many embattled airports through the challenging months ahead.

“However, not all airports will see full business rates relief and all of aviation will continue to face considerable challenges over the coming months and years," she said. "We will therefore need to continue to work with Government on what other steps can be taken to safeguard the UK’s aviation businesses.”

Meanwhile, Willie Walsh, the former boss of British Airways owner IAG, is to take over as director general of IATA, the global airlines trade body from April 2021.

Can the “Valuations” of Office Properties in London Be Trusted, Asks Royal Institute of Chartered Surveyors

These “valuations” are crucial to metrics of REITs and property mutual funds, including net asset value (NAV), amid concerns about conflicts of interest.

In its third quarter report on the state of the UK’s commercial property market, the Royal Institute of Chartered Surveyors (RICS) said that expectations for a decline in rents for prime office space were “the most widespread” since records began in 2014. Yet valuers have barely marked down their valuations of office properties in London, prompting some to question whether they are conflicted by the lucrative contracts they have with the UK’s largest REITs and property mutual funds.

With the UK once again back in lockdown, all workers who can work from home — including the lion’s share of London’s office workers — have been urged to do so. Many of them never returned to the office to begin with. Research published by Morgan Stanley in October found that only 49% of UK workers had made it back to their workplace as of October. This is a particular issue in London, and London-based employers, lumbered with largely empty office space, have begun in recent months to dump at least part of that real estate as subleases on to an already saturated market.

Between June and September alone, more than 1 million square feet (92,900 square meters) become available as firms, including some of the City’s biggest banks, sought to sublet space they no longer needed. Since the start of the virus crisis, the availability of office real estate has mushroomed to almost 20 million square feet, from a 10-year average of 14 million square feet. It is growing at the fastest rate, in net terms, since 2009, according to RICS.

Yet despite plunging demand and rising vacancies, valuers have barely marked down the properties belonging to their clients. This has prompted some in the industry to question the validity of the valuations, reports The Times of London.

“The valuers are now in denial on offices just as they have been for years on retail,” said former Treasury minister Lord Oakeshott, who runs London-based commercial property firm Olim Property, which has no exposure to office or retail properties. “London office rents are clearly in freefall, with very little occupier demand, but the valuers are only marking them down by 0.2% or 0.3% a month.”

The Institute of Chartered Accountants in England and Wales was the first to raise the alarm about property valuations, warning that it sometimes finds “little evidence to support” their validity. RICS, the UK property industry regulator, has launched a review of how property valuations are conducted in response to rising concerns about potential conflicts of interest in the industry. Depending on its findings, it may consider imposing mandatory rotation of valuers

Relationships between REITs and valuers and property mutual funds and valuers tend to last for decades, giving rise to very cozy, deep-seated ties. In some cases, a surveyor may even act as valuer for a firm while also having a seat on the firm’s board. These cozy relationships may make it more difficult for a surveyor to reduce its estimated value of properties belonging to an important client, since it could have a material impact on that client’s performance.

For REITs, the reported valuation has a major bearing on the company’s performance metrics, which in turn affect the share price. In the case of open-ended property mutual funds, the price at which investors subscribe and redeem their shares is determined by net asset value (NAV), so the valuation directly impacts their returns too.

The concentration and governance of the valuation industry are also under scrutiny, having drawn comparisons with the UK’s scandal-tarnished audit profession, which has been dominated for decades by the “Big Four” global accountancy firms (KPMG, EY, PwC and Deloitte) but is now finally undergoing an overhaul.

The valuation of the UK’s property industry is essentially controlled by a tiny clutch of surveying firms, including CBRE, Knight Frank, and Cushman and Wakefield. By its own admission, CBRE values two-thirds of Britain’s biggest REITs, as well as the three largest office landlords: Great Portland Estates, Land Securities, and International Workspace Group (previously known as Regus). Together with Knight Frank, it is estimated to value at least 60% of UK property funds.

Just as the Big Four audit firms have often audited the accounts of their clients while also charging fees for a host of other services, valuers are often appointed to value a fund manager or property firm’s properties while charging them fees for other consulting services. In both cases, there is a clear potential for conflicts of interest.

Though industry representatives strongly deny such charges, The Times suggests that valuers are at least beginning to acknowledge a growing perception that the industry may be prone to malpractice, sometimes with hugely costly consequences. At the end of last year, acute uncertainty about valuations triggered a run on M&G’s £2.5 billion flagship property fund, which led the fund to suspend redemptions — and the fund’s investors still can’t touch their money.

By Nick Corbishley, for WOLF STREET.

Authorities step up enforcement against businesses over business rates

A number of local authorities are starting to turn the heat up on businesses that have not paid their business rates bills during the period of the Covid-19 pandemic and Lockdown- and are applying for enforcement actions via the courts.

According to business rates experts at international property consultancy Colliers International, an increasing number of their clients are receiving letters demanding payment and/or a court summons.

As John Webber, Head of Business Rates at Colliers International said, “It is ironic that the Government is preventing private landlords from taking recovery action against tenants not paying rent while at the same time turning a blind eye to Billing Authorities acting on recovery action as if COVID 19 didn’t exist!”

Unlike those in the retail and leisure sectors, office occupiers were not granted a business rates holiday during Lockdown, despite the Government announcing on 20 March that staff in office-based businesses should not assemble together, nor to travel on public transport unless they were essential workers- but should work from home- effectively “prohibiting the use” of such offices- leading to many business owners leaving their offices and work locations empty.

And as the initial Lockdown started to lift, many offices remained empty or only became partly occupied, particularly as the Government insisted on social distancing rules, limiting numbers and discouraging workers from using public transport. Now as we experience a second Lockdown, even these offices have been emptying again.

The impact on many businesses has been dramatic, with many suffering a high financial disruption throughout the period. This is shown by the number of companies that have begun to appeal their business rates assessments on the grounds of an MCC (Material Change of Circumstance) to their business operations as a result of Covid-19 and Lockdown. Latest CCA (appeals) figures announced last week show that over 183,000 businesses made a Check and so began the appeal process in the 6 months period 1 April to 30 September, 2020, averaging according to Colliers over 1,000 appeals per day- an unprecedented number, and putting us, according to John Webber, Head of Business Rates at Colliers International, on a “wartime footing” .

Webber said, “We appealed to the Government to introduce a business rates holiday for the period of Lockdown and to introduce some reliefs for the disruption to businesses seen since. As we endure a second period of Lockdown, this is more important than ever.

“In the meantime, we have been negotiating on our client’s behalf with local billing authorities requesting them to show leniency to businesses that are struggling to pay their bills. We are finding that attitudes vary greatly depending on where businesses are based and the attitudes of the individual billing authority. There is a total lack of consistency- some clients for example with properties across boundaries find they are granted reliefs for some of their properties by certain local billing authorities but not from others”

“And recently there has certainly been a step up of enforcement activity via the Courts. It’s ironic that whilst many businesses have been forced to “empty “their offices for a second Lockdown, the courts are being kept open in this period to deal with the backlog of cases. As a result, we believe we’ll see more court summonses and enforcements as we go forward.”

Colliers cites the following examples of enforcement activity it is seeing in some parts of the country:

One local authority in Hampshire issued Final Notices to businesses in June whilst the country was still in lockdown and didn't offer Colliers the chance to re-calculate its client's instalments and "didn't see" the email sent requesting they do so.
This local authority is currently saying that the client can either reinstate instalments by making a catch-up payment with costs included or just pay the year's liability upfront – but those are the only ways in which they will remove the summons.

One West London local authority has summonsed a Money Exchange shop where the business did not get a grant and was also not entitled to rates relief. It is now being chased for payment through the courts.

One Midlands client gained reliefs on some offsite facilities from one billing authority and presented these facts to another where it hadn't. However, the stock response was that it is all down to local interpretation of the government's guidelines.

The client is now being chased for non-payment via the courts.

As Webber, concludes, "It is outrageous that not enough is being done to help thousands of businesses who, due to a Government led policy, are struggling to pay their rate bills and keep afloat, during this difficult time. Instead of receiving help, many are receiving threats of court summonses and it's a postcode lottery as to where this is occurring.

"Many of our clients have been badly impacted by Covid-19 but have received little or no assistance, unlike some other sectors of the economy. Such businesses are vital if the economy is to rejuvenate.

"We urge the Government to offer reliefs for the lockdown periods and to instruct Local Billing Authorities to show flexibility and support to business rather than stepping up the heavy-handed court summons."

Retail bosses call for business rates holiday extension ahead of looming £2.8bn bill for London next year

A number of chief executives have urged the government to extend a business rates holiday, as fresh data revealed the bill for hard-hit companies in London will be £2.8 billion next year.

Bosses at retailer Ann Summers and pubs group Young's were among those that spoke to the Evening Standard and made the plea ahead of the rates holiday, launched at the start of the pandemic to help the High Street ride out the virus crisis, finishing at the end of March.

Firms are worried that even if a vaccine is secured soon, it will take time for pre-Covid customer numbers to return.

The latest lockdown also means scores of venues are closed until next month, losing out on important sales in the run up to Christmas.

Property agency Altus Group has calculated that the business rates bill for the 66,374 venues that did not have to pay in the capital this year, will be £2.8 billion for the year starting April 2021.

Robert Hayton, head of property tax at Altus Group, said: “Tens of thousands of London premises have already appealed their business rates assessment given the devastating effect the pandemic has had on values. These must be resolved before bills are issued by councils next year so tax liabilities are reduced considerably. Discerning targeted relief can support this.”

Patrick Dardis at Young’s said it is “critical” the rates holiday is extended. He added: "It will take a year plus post the pandemic for most business to get back to anywhere near normal.”

Jacqueline Gold at lingerie chain Ann Summers said: “We need some form of extension or at least tapering of the holiday, but even more importantly, there needs to be fundamental reform to the business rates system which as it stands puts bricks and mortar retailers at a disadvantage to pure-play online rivals.”

Jewellery retailer Boodles’ Michael Wainwright said: “Even before the pandemic, the business rates system was regarded as an outdated and unfair tax on property owners. It was ripe for transformation then and even more so now.”

Neil Clifford at accessories firm Kurt Geiger, said London would be worst hit by the rates, and pointed out that capital could also suffer from the planned move to end tax free shopping.

Sean Dixon at Savile Row tailor Richard James said: “We don’t know what the business landscape will be like next spring but at the very least it will be challenging.”

A Treasury spokesperson said: “Our business rates holiday for retail, hospitality and leisure is in place until the end of March, providing relief for businesses worth over £10 billion. This is part of a broader package of support that is one of the most generous and comprehensive in the world.”

He added: “We keep our support under constant review and are committed to helping people and businesses through this crisis.”

Which techniques can be used to mitigate empty property rates?

Empty property rates is a tax on failure – the failure of the owner to find either a profitable use for the premises or a paying tenant. It is no wonder that affected ratepayers look to mitigate their liabilities, and the devolved administrations of the UK are developing their own rules.

In England, you can, at present, mitigate using a variety of techniques, although the outcome in any specific case is not guaranteed. However, there are two techniques worth exploring.

Last month, the UK Supreme Court heard an appeal following the leasing of unoccupied properties to special-purpose vehicle (SPV) companies.

Property owners sought to avoid liability by entering into schemes whereby SPVs took short leases of the properties and became liable to pay the relevant taxes. No rates payments were ultimately made by those SPVs as they were then either wound up or struck off from the register of companies for separate reasons.

The local councils issued proceedings in the High Court for recovery of the rates from the owners. The councils argued that the court should apply a legal principle that requires any relevant statute to be interpreted with reference to the fact that a tax-avoidance scheme is in place. Also, they argued that the separate corporate identity (and therefore liability) of the SPVs could be disregarded because the corporate veil was pierced. The Court of Appeal found in favour of the owners.

Ratepayers will be hoping the Supreme Court upholds the Court of Appeal and leaves reform to parliament. Judgment has been reserved.

This month, the Court of Appeal will hear an appeal from the Upper Tribunal in a case concerning property guardians. Pending redevelopment, the property was occupied by property guardians, four of whom had separate rooms; the others shared communal living space. The Upper Tribunal held that the individual rooms occupied by the guardians were separate units on which each guardian was liable for council tax. The arrangement of the space was such that the premises were not otherwise rateable. The Court of Appeal can now give a definitive view.

Empty property rates is a bad tax. Somehow, the ratepayer's glass must remain half full.

My office is almost empty because of the pandemic - can I get a rates reduction?

How often do we read "The pandemic has changed everything"? One thing that has not changed for an office occupier is the business rates bill. That is a problem, because while your rates cost stays the same, the use you get from your office is massively reduced as most or all of your staff now work primarily from home.

The UK government has introduced business rates relief measures to help retail businesses with their loss of revenue. Can office occupiers apply for business rates reductions?

Yes, you can

There is something that some office occupiers can do to minimise their business rates overhead. That is to request a check of your rateable value on grounds that there has been a material change of circumstances.

You have grounds to request a check of the rateable value if there has been a change to:

- matters affecting the physical state or enjoyment of the property; or
- matters affecting the physical state of the locality in which the property is situated or which are physically manifest there. The change needs to be physically present and the presence must be obvious and visible.

A material change of circumstances must have occurred on or after the relevant date on which the relevant rating list was compiled. Currently that is 1 April 2017 and so pandemic related changes do qualify. Note however, that there is no entitlement to a reduced rateable value simply because property values or economic circumstances changed after that date.

How does it work?

Let’s think about an office building in an urban office location since the arrival of the pandemic. The population inside the office is only a fraction of the usual headcount in attendance. Outside, the streets are quiet, many shops are shut or open only for restricted hours and if you want to get a beer before the journey home, either there is less choice of venue or no choice at all.

Now, here is a check list, to establish whether there has been a material change in circumstances - blessed by the Upper Tribunal:

- Does the matter concern a characteristic of the property or its locality, or is it something to do with the personal attributes of the actual occupier or the way in which a party conducts its business? If the latter, then generally it will not be a relevant change;
- If it concerns a characteristic of the property or of the locality, does it affect the physical state of one or the other and, if not, is the change physically manifest?

Taking our example, the much-reduced population in the office is not a result of the way that the individual occupier conducts its business. Any occupier would now have most of its staff at home in order to comply with the law or best advice.

With regard to the second bullet point, the closure of local shops, restaurants and pubs and the missing pedestrians are likely to be regarded as physically manifest features of the change in circumstances imposed by the pandemic.

So the ratepayer is right to claim a check of its rateable value.

What reduction will be achieved?

This needs advice from a rating surveyor specialist in the geography and business sector of the property.

We expect that the valuation officers will not need too much persuading that a material change of circumstances has occurred but they will dig in their heels as to what reduction in value is appropriate.

Valuation Office Agency is discussing with professional and industry bodies how the regulations introduced to cope with the pandemic impact rateable values for affected businesses. The aim is to agree the underlying legal and valuation principles that can be applied to the wide range of impacted property classes. Expect some progress to be reported soon.

What to do now?

The processes of requesting a check and making the valuation case is complex and needs rating surveying advice.

See your rating surveyor without delay.

If you do not have a retained rating surveyor, seek a recommendation.

SAVENIGHTCLUBS URGES UK PM TO PREVENT “TSUNAMI” OF LOSSES

The nationwide coalition has penned an open letter to the gov on behalf of 'the forgotten industry' which has been shuttered for eight months now

New nationwide coalition #savenightclubs has published an open letter to UK prime minister Boris Johnson urging him to act now or “permanently lose the country’s nightclub industry and the enormous economic contribution it makes to the UK”.

The letter emphasises that nightclubs in the UK have been shuttered for eight months now and 70% of people working in nightclubs are self employed and therefore were not eligible for the furlough scheme.

The call for support follows the coalition’s recent survey of 101 nightclub owners and managers which revealed that 58% of nightclubs across the nation will go out of business within a month, four in five (81%) nightclubs will be shut by Christmas, and 10% expect their business to survive longer than four months.

Now, the initiative is calling on the government to provide a financial survival package beyond the Culture Recovery Fund, introduce protection from eviction for nightclubs during and immediately after the crisis, and extend business rate relief to April 2022.

The letter, which you can read in full below, has been backed by the Night Time Industries Association and myriad clubs across the UK including Infernos in Clapham, The Box in Soho, Cirque Manchester and Bamboo Glasgow.

Dear Prime Minister,

We are writing to you as a group of over one hundred nightclub owners, managers and workers whose businesses have now been closed for exactly eight months this Friday. We urge the government to act now or permanently lose the country’s nightclub industry and the enormous economic contribution it makes to the UK.

We are writing this letter on behalf of the nightclub industry, a sector who employs circa 45,000 people – 72% of whom are under 25 years old. We are a proud part of British culture and crucial to the UK economy, generating £3bn a year in income. The nightclub industry proudly employs a huge spectrum of job roles including bartenders, DJs, performers, security, cleaners and more. Behind these stats are thousands of individual stories of hardship from people who feel like they have been forgotten.

“WE URGE THE GOV TO PREVENT A DEVASTATING TSUNAMI OF JOB LOSSES AND A WIPEOUT OF FUTURE ECONOMIC CONTRIBUTIONS”

Over the last 8 months, the industry has faced Lockdown 1, household and tiered restrictions and an impossible curfew of 10 pm. Now, in the midst of a second national lockdown and the announcement of the furlough scheme extension until March 2021, this is likely to result in our venues closing for an entire year. Unlike hospitality and gyms who were able to trade over the summer months, we have not been able to open at all resulting in zero revenue since March.

Venues are facing mounting rent bills, ongoing running costs and the prospect of business rates in April 2021. We urge the government to prevent a devastating tsunami of job losses, a wipeout of future economic contributions and further ruin to towns and cities across the UK which are already on their knees.

So far:

Despite the government’s on-going support to sectors such as hospitality and gyms – nightclubs are the forgotten industry. Over 70% of people working in nightclubs are self employed and therefore were not eligible for the furlough scheme. No alternative financial support package has been proposed for the nightclub industry.

Stats:

Last month, #SaveNightclubs carried out a survey revealing that four in five nightclubs (81%) will be shut by Christmas unless the government urgently intervenes.

The #SaveNightclubs campaign calls on the government to:

Provide a financial survival package beyond the Recovery Fund, helping the sector weather Covid's impact and assist in future reopening.
Introduce protection from eviction for nightclubs during and immediately after the crisis.
Extend business rate relief to April 2022, enabling nightclubs to get back on their feet in 2021.

Thank you in advance for taking the time to read this letter.

Respectfully yours,
Vincenzo Sibilia and Asher Grant of #SaveNightclubs campaign group

An extended lockdown in England could shut some shops for good, bosses say

Non-essential retailers say they are losing £2bn a week of pre-Christmas sales

More than 60 leading retailers in the UK have said shops that are not allowed to trade before Christmas may never reopen.

The group, comprised of business leaders from companies including Harvey Nichols, Burberry and Marks & Spencer, has called for all retailers to be able to open by the start of December.

In a letter to the Times, the retailers said the closure of non-essential shops under the national lockdown in England had put "hundreds of thousands of retail jobs at risk" and was threatening to sink businesses.

"A continued period of retail closure will see more shuttered high streets and many more job losses at the heart of the festive season," the signatories wrote.

The letter also pointed to a recent paper from the government's Scientific Advisory Group for Emergencies (Sage), which said that closing non-essential shops would have a minimal impact on the spread of coronavirus.

"Retailers have invested hundreds of millions in making their stores Covid-secure, keeping both customers and staff safe," the letter read. "Yet retail stands on the brink, and decisive government action is needed to save it. Retailers of all shapes and sizes must be allowed to reopen by the start of December."

November and December account for more than a fifth of all retail sales, the group said, with the closures depriving non-essential businesses of around £2bn each week in sales.

According to research conducted by the British Retail Consortium, between 5 and 8 November, footfall fell by 75% year on year.

Helen Dickinson, the chief executive of the BRC, said the closure of non-essential retail was “compounding the challenges facing our high streets”.

“‘Non-essential’ stores are estimated to be losing £2bn per week during lockdown, yet rents continue to mount, and the business-rates cliff edge is looming,” she said. “All the while, government reports show the impact of closures on Covid transmission is low.”

On Saturday, the bakery chain Greggs announced it is to cut more than 800 jobs as result of the coronavirus pandemic.

The firm’s CEO, Roger Whiteside, said that if sales remained at the levels seen during lockdown, Greggs “will not be profitable as a business”.

Earlier this week, WH Smith revealed it was planning to close 25 high-street stores, after sales fell 19%, leaving it £280m in the red.

Big 4 grocers, Aldi & Lidl to net almost £2bn in business rates relief

Sainsbury’s and Tesco both paid millions to shareholders in dividend payouts despite accepting government support in the form of business rates relief for the 2020-21 financial year.

- Tesco, Sainsbury’s, Morrisons, Asda, Aldi & Lidl set to benefit from almost £2bn in business rates relief this year
- This represents more than 1/6 of the total £10.1bn business rates bill written off for all businesses during the year
- At the start of the Covid-19 pandemic the Chancellor announced a business rates holiday until March 2021

The UK’s biggest grocery chains are set to benefit from almost £2 billion in business rate tax breaks this year despite sales soaring during the pandemic, according to new analysis.

It comes after Sainsbury’s and Tesco both paid millions to shareholders in dividend payouts despite accepting government support in the form of business rates relief for the 2020-21 financial year.

At the start of the Covid-19 pandemic, Chancellor Rishi Sunak announced a business rates holiday for retail, leisure and hospitality firms until March 2021.

New data compiled for the PA news agency by real estate adviser Altus Group projects the UK’s Big 4 grocers – Tesco, Sainsbury’s, Asda and Morrisons – and German discount rivals Aldi and Lidl will save around £1.87 billion as a result.

This is set to represent more than one sixth of the total £10.1 billion business rates bill which has been written off for all businesses during the year.

Tesco, regarded as the UK’s biggest employer and largest grocery chain by market share, is expected to receive a benefit of around £585 million from the tax break, Altus said.

Sainsbury’s is expected to save £498 million from its rates holiday for the year.

Last week, Sainsbury's said it had received a break worth £230 million for the half-year to September in a trading update which also saw it reveal plans to axe 3500 jobs.

However, the retailer came under fierce criticism as it also declared an interim dividend of 3.2p plus a special dividend of 7.3p for shareholders.

Sainsbury's said its business rates holiday was more than offset by an increase in costs, due to the pandemic, and added that a large portion of the dividend payout related to trading before the pandemic.

Last month, Tesco paid £315 million in dividends to shareholders despite its own rates windfall.

Retail analyst Richard Hyman said "something doesn't feel right or smell right" about dishing funds out to shareholders in the circumstances.

"In my opinion, the timing of the dividend announcements just feels like a PR own goal," he told PA.

"Tesco and Sainsbury's have both paid some dividends related to trading before March which I think is fair, but after that you can question it.

"Since the pandemic, there has been great public support for the work supermarkets have done and this risks knocking that back.

"They have also taken on big costs. The shift to online will not help them run profitably, so it is definitely quite a complex issue."

On Wednesday, B&M chief executive Simon Arora paid his offshore family trust £44 million in dividends as the retailer, which stayed open during lockdown as it was classed as essential, saved £38 million through the business rates holiday.

Last week, Julian Richer, chief executive of non-essential retailer Richer Sounds, said he was "really annoyed" the grocery chains benefited from the tax break as they also saw "queues around the block".

The figures from Altus show Asda is projected to save £297 million, Morrisons around £279 million, Aldi £109 million and Lidl £108 million, for the year.

Robert Hayton, head of property tax at Altus Group, said: "Some parts of the retail sector have managed to thrive during the pandemic and the rates holiday has been the icing on an already very sweet cake.

"But, with hindsight, did the Big Four need around £1 in every £6 of business rates relief made available?"

In Wales, the six major supermarkets still had to pay around £78 million for rates for some stores as a result of devolved business rates.

Councils pile pressure on firms over unpaid business rates during pandemic

Local authorities have begun to turn up the heat on businesses that have been unable to pay rates bills during the pandemic, with some pursuing claims through the courts.

According to property consultancy Colliers International, an increasing number of clients are receiving letters demanding payment or court summons.

Office occupiers were not granted a business rates holiday during the Covid-19 crisis, unlike retail and leisure firms, but many have been left empty due to lockdown, restrictions on travel and social distancing rules.

Colliers said one West London council had launched legal action against a Money Exchange shop, where the business did not get a grant but was not entitled to rates relief.

The company is now being chased for payments through the courts during the second nationwide coronavirus lockdown.

In Hampshire, a local authority issued final notices to businesses in June, at the height of the pandemic, Colliers said.

It will now only accept catch-up payments with costs included or a full-year's liability paid up front.

An unprecedented 183,000 companies have begun a business rates appeal process between April and September, averaging more than 1,000 per day, as the number of firms citing a Material Change of Circumstance soared.

John Webber, head of business rates at Colliers, said the surge has put the consultancy firm on a "war footing".

Webber said: "We have been negotiating on our client's behalf with local billing authorities requesting them to show leniency to businesses that are struggling to pay their bills. We are finding that attitudes vary greatly depending on where businesses are based and the attitudes of the individual billing authority.

"There is a total lack of consistency - some clients for example with properties across boundaries find they are granted reliefs for some of their properties by certain local billing authorities but not from others."

He added: "And recently there has certainly been a step up of enforcement activity via the courts. It's ironic that whilst many businesses have been forced to empty their offices for a second lockdown, the courts are being kept open in this period to deal with the backlog of cases.

"As a result, we believe we'll see more court summonses and enforcements as we go forward."

WH Smith boss urges government to consider extending the business rates holiday

The chief executive of WH Smith has urged the government to extend the business rates holiday as the retailer plunged into the red.

The High Street chain has been hurt by Covid lockdowns and travel restrictions. It has a number of stores at airports and train stations where passenger numbers have significantly fallen this year.

It recorded a statutory pre-tax loss of £226 million for the year to August compared to a £135 million profit the previous year. The underlying loss was £69 million, better than analysts had expected.

Boss Carl Cowling said the High Street business has seen a steady recovery and most of its stores have now reopened. But he added that footfall is still significantly down on the High Street and pre-Covid numbers won't resume by the end of March when the current business rates holiday ends. He said extending that would assist a number of companies.

Following the virus outbreak WH Smith took a number of actions to focus on cost and cash management.

The included working with landlords to significantly reduce or remove rent payments and to link, as far as possible, with revenue.

The board has decided not to pay a dividend in respect of the financial year ending August 31.

Treasury messed up over B&M's Covid rates freebie

Where shops were open and sales booming, there was no case for a year's relief from business rates

It's bad enough that the big supermarkets, sporting their best sales figures in years, were given a pandemic freebie by Rishi Sunak in the form of a year's relief from business rates. But the case of the discount retailer B&M, clinging to its £38m from the Treasury even as it pays a £250m special dividend to shareholders, is more extreme.

B&M in April found itself in a near-perfect competitive position. Since it sells food, it was classed as an essential retailer, and so could keep its 656 UK stores open. But, because its shelves are also stuffed with toys, games, furniture, stationery, rugs and so on, it also had the run of the inessential retailing pitch.

B&M is a slick and growing business, but its numbers for the April-September period were off the chart. Like-for-like sales improved by 30% in the UK. Top-line profits almost doubled to £296m.

Like the supermarkets, B&M mutters about how business rates are out of date (true) and how Amazon also got lucky in the pandemic (also true). But that's not the point. A property-based rates system is the one we have currently and the relief was supposed to help stores that were closed. Where doors were open – indeed, enjoying booming demand – there was no case for a giveaway. The Treasury messed up.

B&M has returned £3.7m of furlough money "in light of the strong results", which suggests a guilty conscience of a sort. So why shouldn't the same logic to the £38m of rates relief? B&M's plea that the business suffered extra PPE and cleaning costs doesn't cut it: extra demand will have covered that bill and more.

Simon Arora, the chief executive, and his brother Bobby, will share £37m from the special divi thanks to their 15% shareholding. Don't confuse that sum with the nearly identical quantity of rates relief – they are different things.

But if the coincidence maximises Sunak's embarrassment, so it should. The chancellor (or rather us) have received an expensive lesson in how shameless some boardrooms can be.

Will guardian schemes survive the Court of Appeal's decision in Ludgate House?

Richard Clayton QC of Kings Chambers and Exchequer Chambers, and Faisel Sadiq discuss the upcoming appeal in Ludgate House Ltd v Ricketts (VO), in which they are instructed to represent the appellant (London Borough of Southwark), and how it is likely to play a significant role in the future of property guardian schemes.

In November 2020 the Court of Appeal will have its first opportunity to examine whether property guardianship schemes are effective to mitigate a property owner's liability to pay business rates. Southwark's appeal against the decision of the Upper Tribunal (Lands Chamber) in *Ludgate House Ltd v Ricketts (VO)* [2019] UKUT 278 (LC) raises several issues of principle including whether guardianship schemes should, as a matter of public policy, be ineffective in avoiding liability for business rates on the ground that they may often involve committing a criminal offence.

Various different rate mitigation schemes are available. These include:

- granting a lease to a company which then then goes into liquidation – see *Rossendale BC v Hurstwood Properties* [2019] 1 WLR 4567
- granting a lease to a company which uses the premises for storage for six weeks so as to give rise to beneficial occupation with the property then being vacated so as to benefit from the rates holiday of three months afford to empty properties (six months for industrial and warehouse premises) – see *R(Principled Offsite Logistics) v Trafford Council* [2018] EWHC 1987 Admin
- granting licences to property guardians to occupy premises with a view to allowing the owner to argue that as the property is being used for residential use it ought to be removed from the rating list or that the presence of the guardians ought to reduce the value of the property and result in a lower valuation for rating purposes

Utilising guardian schemes has some particular attractions. Most rates mitigation schemes involve the building owner paying a fee to the provider of the mitigation product – often a percentage of the monies saved by the mitigation scheme. Under guardianship schemes, the property guardians will typically pay a licence fee (in essence, rent) to live at the property. Normally, the operator of the scheme will share part of the licence fees with the building owner. Consequently, the building owner may actually make a profit whilst reducing or extinguishing their rates liability.

The criminalising of trespassing on residential premises by section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, has had the effect of increasing the incidence of trespass to empty commercial buildings. This has often meant that the owners of empty commercial buildings will need to contract with security firms to secure their premises against trespassers. In the case of guardianship schemes, the guardians' licence will typically place on them obligations to monitor the premises and take steps to notify the scheme provider or the building owner if they suspect trespassers are seeking to gain access to the building. This may reduce the need for the building owner to hire security staff and results in a further costs saving.

The presence of guardians will often deter vandalism of the building too. Frequently, the use by guardians of premises as a residence has often resulted in the Valuation Office deleting those premises from the rating list on the basis that the building is wholly used as a residence. As a result, this does not give rise to a liability to business rates but, instead, creates a liability to pay council tax. Any council tax payable is likely to be significantly lower than business rates for the same premises. Finally, even if the premises remain in the rating list the Valuation Office may well accept that the presence of the guardians in some parts of the building will result in the building having a lower rateable value and so reduce the rates payable if the property remains liable for business rates.

In Ludgate House the Valuation Tribunal for England decided that, in spite of the presence of property guardians at the property, an 11 storey 175,000 square feet building close to Blackfriars Underground in central London, it was occupied by Ludgate House Ltd. Accordingly, Ludgate House Ltd was liable to pay millions of pounds in business rates. That decision was reversed by the Upper Tribunal, but the Court of Appeal has granted Southwark permission to appeal on four grounds. These grounds of appeal include an argument which fundamentally undermines guardian schemes – that where the guardianship scheme use premises in such a way that they should be licensed as a house in multiple occupation, and no license is, in fact, obtained, the Court should, on grounds of public policy, decline to allow the building owner to rely on that scheme. Southwark submit that the scheme to mitigate their business rates liability amount to a criminal offence contrary to s.72(1) of the Housing Act 2004.

Many guardianship schemes will, therefore, become ineffective if Southwark's submission prevails. In Ludgate House the Upper Tribunal decision found that at the planning stage it was envisaged that 32 people would go into occupation of Ludgate House as property guardians. Once 5 or more people occupied Ludgate House, the premises became subject to mandatory licencing as a house in multiple occupation (HMO) in accordance with Part 2 of the Housing Act 2004. Neither the company which organised the guardian scheme or Ludgate House Limited, itself, had ever applied for the necessary HMO licences.

Had an HMO application been made to Southwark, Ludgate House Limited (or the company which set up the guardian scheme) would have had to satisfy Southwark that they had complied with the minimum HMO standards which the 2004 Act imposes via subordinate legislation. Instead, the unlicenced arrangements constituted a criminal offence breaching s 72(1) of the Housing Act 2004, which states that "a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed".

The 2004 Act was enacted as a result of the 1999 Consultation Paper, Licensing of Houses in Multiple Occupation. That Consultation Paper stressed that occupiers of unlicenced HMOs were exposed to a number of specific and serious health and safety risks. Southwark argue that it is legitimate for the Courts to look at this Consultation Paper when interpreting s 72: see R v T [2009] 1 AC 1310.

Southwark, therefore, submits that the Court of Appeal, should in accordance with the Supreme Court decision in *Patel v Mirza* [2017] AC 467,- assess whether the public interest would be harmed by enforcing the illegal agreement. The Court must, therefore, consider (a) the underlying purpose of the prohibition breached and whether that purpose would be enhanced by denying the claim, (b) any other relevant public policy which denying the claim would affect and (c) whether denying the claim would be a proportionate, bearing in mind that punishment is a matter for the criminal courts. In *Patel v Mirza*, the Supreme Court concluded that the basic rationale for illegality doctrine is that it would be contrary to the public interest to enforce a claim, if this would be harmful to the legal system's integrity.

Southwark says that the Court should refuse to allow Ludgate House Ltd to use the premises as an illegal HMO to avoid business rates. Their scheme harms the public interest by undermining the HMO licensing legislation. In any case, there is no countervailing public policy which justifies Ludgate House Ltd's arrangements and rejecting its scheme is a proportionate response to the illegality in question.

Southwark raises a profound objection which applies to a significant number of guardianship schemes. If Southwark succeeds, the need to obtain HMO licences and thereby comply with minimum standards as respects health and safety will make many such schemes unviable. The Court of Appeal's decision will, therefore, be closely watched by those interested in rate mitigation schemes.

Empty property rates in England; guarding the guardians?

A tax on failure

The two taxes in England on the occupation of property are non-domestic rating and, for domestic rating, council tax. Pre COVID, business rates yielded £30bn and council tax £36bn annually. Rates are payable on business premises whether occupied or empty. For some general comments on empty property rates (a tax on failure) see my article "Empty property rates in England; how can a business mitigate its liability?" posted on 23 October 2020.

Affected ratepayers look to mitigate their liabilities to empty property rates. The devolved administrations of the UK are developing their own rules to restrict mitigation. This note provides comments for England.

Yes, you can

In England, you can mitigate your liability for business rates using a variety of techniques. This note looks at the use of property guardians.

Property guardians

Empty buildings may need security. Live in "guardians" can provide that service. There are providers of guardian services who will find people to move into empty business premises and live there. These arrangements should also produce a saving of business rates.

How does that work?

Property is domestic and liable to Council Tax if it is used wholly for the purposes of living accommodation. Otherwise, unless exempt, it will be liable to be assessed for non-domestic rating. Property may be "wholly" used for a particular purpose even if not all of it is so used. Property which is not in use is domestic property if it appears that when next in use it will be domestic.

Where a property is partly used for domestic purposes, and partly used for non-domestic purposes, it is a "composite" and appears in both the rating list and the Council Tax valuation list.

A property may be a "composite" if, notwithstanding its mixed domestic and non-domestic use, it is nevertheless a single unit. Examples of composite hereditaments include live-work units, owner-occupied flats above shops, and public houses with resident landlords where the same person is in rateable occupation of the whole property for both non-domestic and domestic purposes.

How much?

The rateable value for a composite is an amount equal to the rent, which "would reasonably be attributable to the non-domestic use of property". Council tax should be the cheaper option.

Arrangements

In a pending case, the owner of a vacant office building, earmarked for redevelopment, agreed with a provider that they would install 32 guardians to provide a robust level of protection. The owner gave the provider a licence to occupy the building and the provider granted licences to the individual guardians.

The area over which each guardian was granted rights was referred to as the "living space" meaning the area designated as available for occupation from time to time, which could be varied by the provider. In practice the living space extended to the whole of the building excluding the plant rooms. The guardians could occupy the living space and share it with the others. A guardian had no right to exclusive occupation of any part of the living space and could be required to move to a different room. All those permitted to occupy the building were entitled to share the whole of the living space and they were to agree amongst themselves how it was to be shared, but each guardian would have a room of their own.

How to tax the premises

In 2019, the Upper Tribunal held that the guardians' individual rooms were separate units and the relevant occupier was not the owner of the building but the individual guardian whose temporary home it was. The rooms were used wholly for the purposes of living accommodation and the guardians were not liable for rates but were liable for council tax. The building was not a composite because there was no single occupier of the domestic and non-domestic space.

That outcome suited the owner and disappointed the local authority responsible for collections.

Appeal

The decision of the Upper Tribunal will be tested in an appeal hearing in the Court of Appeal later this month.

What to look for

Ratepayers will be hoping that the Court of Appeal follows the reasoning of the Upper Tribunal. Nevertheless, the Court of Appeal has an opportunity to hold that it is the council's ability to charge empty rates that is in greater need of guarding.

Ludgate House Limited v Ricketts and London Borough of Southwark [2019] UKUT 278 (LC)

Coronavirus: UK manufacturers call for long-term economic recovery plan

UK manufacturers are urging the government to introduce a "clear, long-term economic action plan" which provides business and industry with a consistent strategy to help them steer a path through COVID-19.

Make UK — which represents British manufacturers — has offered to help build a "robust" national coronavirus testing capacity for mass regular testing in the UK.

Manufacturers are calling for a "clear exit strategy with collective agreement between industry, scientists and government" on when lockdown ends.

Additionally, a fully functioning test, trace and isolate system that "removes the time delays" that employers and their workers currently face.

The group says that by working with the government on testing, it will be easier to identify areas which need extra measures to deal with COVID-19 outbreaks and avoid future lockdowns.

It comes as Make UK is publishing its own three-point action plan which contains proposals for the immediate lockdown period, an exit strategy as well as a long term economic and industrial recovery.

Data from a survey of 198 firms showed that over a third (36.8%) believe it will take longer than 12 months to return to normal trading.

While 26.8% think it will take between six and 12 months. 26% of companies expect to be at full operating capacity at the start of 2021.

On Brexit, it's urging to government to keep the borders open for goods, services and key freight routes protected and work with key trading partners.

"Looking forward, as well as securing a good deal with the EU which avoids the disastrous prospect for industry of leaving without one, government must set out a 'ready to go' strategy to fire up demand and help repair the economic damage," Make UK said.

As part of its “Prepare, Implement, Lead” action plan, it calls for the creation of an Industry Action Group which would feed weekly impact and intelligence data into the Cabinet Office Briefing Rooms (COBRA).

The weekly update would be on what level of support is needed to protect businesses, employees and communities.

Additionally, the report calls on the government to create jobs, by introducing an amnesty and National Insurance Contributions and other employment taxes.

As well as, establish a National Skills Taskforce to help redeploy highly skilled engineers and technical workers who are now unemployed. Finally, reform the Apprenticeship Levy to help arrest the sharp decline in new starts.

Make UK chief executive, Stephen Phipson, said: “Government has already done a huge amount to support business but, as we move into second lockdown, manufacturers and wider industry needs a clear strategy that ensures we prepare, implement and lead from the start to prepare for the long-term.

“Businesses need as much certainty and stability as possible during these challenging times. Moreover, they need consistency of support. The current piecemeal and ever-changing model of support is not giving firms sufficient time to plan and prepare. Consistent, longer-term support that mirrors our international competitors is now needed.”

To mitigate cash flow challenges and sustainable debt management, it’s asking the government to immediately waive business rates for the manufacturing sector and reduce the costs of business rates in the long run.

It also wants to see the introduction of financial instruments that allow manufacturing firms to manage their debt in a sustainable way.

Make UK’s plan to boost investment and innovation asks the government to double the research and development (R&D) tax credit and make it more accessible to SMEs.

While also extending the temporary increases in investment allowances due to finish at the end of 2020 and finally, the immediate roll out of 5G across all regions.