**HM Treasury / DLUHC Consultation**

**on**

**Business Rates Avoidance and Evasion**

**28 September 2023**

**Introduction**

1. The Charity Tax Group (CTG) has over 1,000 members of all sizes representing all types of charitable activity in the United Kingdom, as well their professional advisers. The organisation was set up in 1982 to make representations on charity taxation and it has since become the leading voice for the UK charity sector on this issue.
2. CTG welcomes the opportunity to respond to the [HM Treasury / DLUHC Consultation](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168032/A_E_consultation_FINAL.pdf). We will be very happy to discuss any aspects of our response further with officials. Our response reflects our concern that some of the suggestions made in the Consultation Document could lead to unintended and, potentially, disproportionate consequences for the charity sector.

**General Comments**

1. Empty Property Relief is an important relief for charities. We support moves that seek to tackle business rates avoidance and abuse. However, we believe it is also important that measures are justified, proportionate and do not have an unnecessarily adverse impact on charities. In this context, more work needs to be done to better understand the scale of the abuse that the Consultation seeks to address. If not, legitimate relief may be lost which is much greater than the abuse that it seeks to address.
2. Virtually all charities are risk averse and would not wish to be involved in schemes that are designed to avoid or evade legitimate business rates. However, in seeking to remove abuse by a minority, some of the proposals in the Consultation Document are likely to increase costs for charities where rates relief is appropriate.
3. We are also concerned that, unless carefully targeted, a tightening of the rules on Empty Property Relief will result in a harmful effect on charities, and on the high street landscape and footfall, reducing, for example, the income of charity shops.
4. It is highly important to charities that the ‘next in use’ exemption is retained.
5. We comment on each specific proposal below, using the question numbering in the [Consultation Document](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168032/A_E_consultation_FINAL.pdf):

**Measures to reform rates on unoccupied properties**

***Question 1: Would increasing the required duration of occupation during the ‘reset period’ from 6-weeks to 3- or 6-months, in your view, be effective in reducing avoidance through empty property rates?***

Our response to this question is made on the assumption that the ‘next in use’ exemption for charitable use is retained. Our responses to this question would significantly differ, were this not to be the case.

In the current economic climate, it is increasing difficult to secure tenants for a vacant property. Letting for short periods in order to mitigate holding costs pending sale or refit can be a legitimate activity. It enables potential tenants (including charities) to trial a location or retail venture. It also increases the availability of property to charities that may not otherwise be made available to them.

If property owners are forced into offering longer minimum letting periods, it will make it more difficult to secure a new tenancy. Given a Business Rates multiplier, currently at 51.2p in the £, such a measure may then encourage owners to entirely strip out the property to make it unoccupiable, so as to remove their rates liability. This is turn will make it more expensive for a new tenant to occupy, further lowering demand in these economically difficult times. The risk then is that empty shops become a permanent feature of the high street. Such a changing landscape could potentially destroy the appeal of a retail location with adverse impact on local businesses as well as for residents and charity shops.

Caution should therefore be exercised. While increasing the reset period to three months may be tolerable by the retail property market, extending it to six months may well prove to be counterproductive and decrease rather than increase revenue from business rates.

A better solution may be to define more clearly what ‘occupation’ means, having consulted with interested parties on the detail of that definition. We cover this in our responses to Questions 5 and 6.

***Question 2: What potential issues may arise from requiring occupation for 3- or 6-months during the ‘reset period’?***

As outlined in our response to Question 1, we can foresee that requiring occupation for a longer period may prove counterproductive.

***Question 3: Would introducing a limit on the number of times EPR could be claimed in a given time period, in your view, be effective in reducing avoidance?***

We do not have a firm view. Much would depend on the number of times that EPR is permitted and the time period over which repeated EPR is tested.

What is important to the charity sector is that there is a ready supply of properties that can be used either on a short term basis (for example, a retail unit for use for a Christmas fundraising campaign, or as temporary accommodation while new premises are identified, existing premises are redeveloped or refurbished) that are, in the context of the resources available to charities, cost effective and without long term commitment.

***Question 4: What potential issues may arise from limiting the number of times properties can benefit from EPR within a given period?***

While we do not have a firm view on the proposal referenced in Question 3, the main issue that we can foresee is finding a balance between what a reasonable, commercial behaviour looks like (that is, making good use of the property so as to minimise rates liability pending sale, refit, etc.) and one that is likely to be abusive (where artificial arrangements are employed). Potential detriment to the high street landscape also should be taken into consideration.

***Question 5: What are your views on adding additional conditions to the meaning of occupation for the purposes of determining whether a property should benefit from a further rate free period?***

Additional conditions defining the meaning of ‘occupied’ for the purposes of triggering a reset and further rates free period would seem sensible. However, the definition of ‘occupation’ would need to take account of the realities of different sectors of the economy, including charities. For example, an enterprise that routinely holds large volume stocks could easily meet the 50% of floorspace condition. But a charity being offered a large space for a pop-up shop may be very grateful for the opportunity but may be unable to meaningfully occupy a majority of the floor space in the period of active use.

***Question 6: How could the additional occupation conditions be effectively defined to reduce avoidance?***

Please see our response to Question 5, above. Consideration should be given to alternative measures of occupation: for example, proportion of floor space, level of public access for the purposes of the charity, headcount of staff or employees using the property, turnover or voluntary income generated in the property, or other measures that evidence actual, rather than contrived, occupation.

***Question 7: What are your views on reforming the current arrangements for empty property rates relief and replacing them with a local, discretionary scheme?***

We are very uncomfortable with any proposal to replace a statutory scheme with a local, discretionary scheme. This risks there being inconsistent policy between different local authorities and confusion amongst charities. Discretionary charities’ relief for (occupied) business rates has tended to favour local charities rather than national ones, whereas we are of the view that Empty Properties Business Rates relief should be applied consistently and nationally. Furthermore, we can see no rational justification for what may become differential treatment between charities in England properly registered as such under the Charities Act 2011.

***Question 8: Are there any other additional criteria which, in your view, should be met for a property to qualify for EPR?***

The definition of ‘occupation’ would seem to be the central criterion for qualification for EPR.

***Question 9: Would removing the ‘next in use’ exemption, in your view, be effective in tackling avoidance of EPR?***

The ‘next in use’ exemption is a very valuable relief for charities, both when occupying otherwise empty properties for their charitable purposes and when purchasing or receiving a gift of property that requires modification or fit out. It should not be removed. Examples of the kind of issues that arise for charities is set out in our response to Question 10. Rather than remove the ‘next in use’ exemption, the conditions for exemption should be tightened, as set out in our response to Question 11.

***Question 10: What issues may be caused by the removing the ‘next in use’ exemption?***

If the ‘next in use’ exemption were to be removed, legitimate, compliant charities would face paying 100% business rates on property that is intended for charitable use, once the Empty Property Relief period has expired. This cannot be right when public policy is to afford statutory rates relief to charities in order for them to deliver public benefit.

The loss of the ‘next in use’ exemption risks limiting the supply and affordability of properties to charities, and increasing the holding costs and costs associated with acquisition and fit out of property (whether by purchase or gift), ahead of the delivery of public charitable activity. The losers of such a move will be the beneficiaries of charities, potentially pushing additional costs onto Local Authorities. With a Business Rates multiplier of 51.2p in the £, charging 100% Business Rates to charities pending their actual occupation will be a serious financial burden.

Several real life examples serve to illustrate the issues that charities face in bringing properties into use:

* A national heritage charity owns a large portfolio of investment properties that are let to tenants. Many have been acquired as part of a larger historic estate. When any of these leases come to an end (or are surrendered), the charity will consider how best to use them, including conversion for their own charitable purposes. In these circumstances, it can take many months, sometimes years before the property can be used by the charity owing to the remedial work (such as renovating or upgrading electrical services or other utilities), substantial repairs, and refurbishment required. On each occasion a significant fundraising effort is required. This situation can be exacerbated by a tenant unexpectedly surrendering the tenancy before the charity has formulated its plans for the building’s future use.
* A university that is looking to repurpose a building following prior use for its charitable purposes. Putting the property back into use will often be geared to the new academic year and therefore, if the property is not able to be re-purposed over the summer period, it may remain out of use for a period of greater than one year.
* A church purchases a former commercial building intending to bring it into use within a reasonable period. They estimate that this may be 12 to 18 months. However, following purchase, they realise that the remedial works and repairs required are far more extensive than were first assessed. In addition, through no fault of the church, the architect and quantity surveyor are, in turn, slow to provide proposals, costings etc. Ultimately the costs of refurbishment have now become prohibitive and further restrictions on use because the property is in a conservation area have emerged. The original viability of the building is now in question and the church has had to reconsider the earlier planned use.

One can easily imagine other reasons why a charity’s property may remain empty for a significant period of time, particularly where an otherwise valuable property is gifted to the charity. We have seen some of these issues arise in practice in recent years:

* The property being found to be situated on contaminated land;
* Health and safety issues requiring closure or vacation of the property (for example unsafe cladding, unsafe structures, or presence of reinforced autoclaved aerated concrete (RAAC))
* The property becoming flooded after acquisition
* Disputed access issues
* Construction supply problems

**The nature of the compilation of the Rating List**

A further problem, not addressed directly by the consultation, arises from the way that a property is assessed for business rates. The property stays on the Rating List under its previous listing even if there is no likelihood of it being used again for those purposes.  Several examples will assist in illustrating the point:

* A national heritage charity has an agricultural barn which was let to a tenant who used it as a wedding venue.  The Rateable Value based upon that use is relatively high (£18,000).  The tenant has vacated the barn and it will no longer be used as a wedding venue, but it stays in the Rating List as a wedding venue until there is an actual change of use.  This principle was confirmed in the case of Arnold v Dearing (VO) [2019] UKUT 224 involving the use of a former pub. The Crooked Spaniard was used as a Wedding Venue which closed, and was then temporarily used as a film set by the BBC.  This means that the heritage charity is faced with paying full rates on the agricultural barn as if it was a wedding venue when in reality it is an empty barn and could revert to being used for storage - which would have a much lower value.
* The same charity owns a former paper mill and has been paying rates of £20,000 per year for several years, after the previous tenant moved out.  It is a large complex site and plans for its future use have not as yet been finalised and will depend on the availability of funding.

**Economic and financial uncertainty**

Finally, at a time when the economic and financial pressures facing society are already impacting on charities’ resources and resilience, removing the ‘next in use’ exemption will serve to increase the financial burdens on charities at the wrong time.

***Question 11: What are your views on how the ‘next in use’ exemption may be improved to minimize the opportunities for rates avoidance, including (but not limited to) introducing additional criteria or devolving the award of the exemption to local authorities?***

We are concerned that charities, and the charity name, are not abused solely for the purposes of avoiding business rates liability. Aside from the moral issue, the reputation of the charity brand is at risk. We recommend the following reforms:

* Tightening of the definition of ‘charity’ or Community Amateur Sports Club (CASC) for these purposes,
* Requiring that the property is actually used for charitable purposes within a specified time-frame,
* Power for a billing authority to claw back business rates in case of no occupation,
* Legislative amendment to enable compliance with the tighter requirements for the ‘next in use’ exemption to apply,
* Amendment of Empty Property Relief for charities that own a property (either freehold or leasehold other than short leasehold)
* An awareness campaign to alert legitimate charities of the risks associated with being involved in abusive business rates schemes,

We do not favour devolution of the award of exemption to local authorities.

Elaborating on each of these in turn:

**Tightening of eligibility requirements and clawback**

We propose that where the ‘next in use’ exemption is employed, the next occupier must:

* be a charity that is **registered** as such with the Charity Commission[[1]](#footnote-1), or
* one that is **excepted** or **exempted** from registration under s30, Charities Act 2011,

or is

* a “**registered** club” within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs),

and that the property is **actually** used by one or more of the above for their charitable purposes within a **specified period** (which may run from, for example, from the later of: the date that the property first becomes unoccupied, last became unoccupied, or the date that one of the above charitable bodies became the owner or lessee of the property).

Use could be periodically monitored by amendment to the ‘notifiable information’ requirements set out in Non Domestic Rating Bill 2023 (Paragraph 3.7 of the Consultation Document). This would prevent the ratepayer having to make more than one annual confirmation. The charity or CASC would declare the date that **actual** use for its charitable purposes commenced. Guidance notes accompanying the declaration would set out the definition of occupation, for the purposes of confirming the Empty Property relief.

**Power for a billing authority to claw back business rates in case of no occupation**

In the event that the charity or CASC does not actually bring the property into use within the **specified period** (above), business rates would be chargeable retrospectively[[2]](#footnote-2), until such use does take place. A right of appeal against a clawback decision should be provided for.

The detailed rules and the length of the specified period would need to be subject to consultation with relevant sector representatives and their regulators.

Actual use may be defined along the lines proposed in our response to Question 6, following appropriate consultation with sector representatives.

The purpose of restricting relief to registered bodies and ultimately requiring actual charitable use is to make it more difficult for contrived charities etc. to be used for the purposes of business rates avoidance. The regulators for the above bodies **will** investigate entities that purport to qualify for relief but that are in reality are no more than a contrived entity with minimal or no charitable use. For example, see the Charity Commission’s ‘objectives’, ‘functions’ and ‘duties’ as set out in sections 14 to 16, Charities Act 2011.

**Amendment of Empty Property Relief for charity owned property**

It seems to us that abuse of the ‘next in use’ exemption employs property owned by a third party being leased or licensed to a charity for the purposes of gaining relief from business rates in circumstances where that use may be contrived.

One way of overcoming the problems that arise for legitimate charities (as outlined in our response to Question 10) would see charities that either own their property or have a leasehold interest that is not a ‘short’ leasehold (‘short’ to be defined) automatically qualify for Empty Property Relief until such point as they occupy the property for charitable purposes. Other charities would be subject to the more restricted ‘next in use’ provisions as outlined above.

**Awareness campaign**

The Charity Commission has published warnings to charities and their trustees about business rates avoidance schemes, from time to time, particularly following the Kenya Aid and Public Safety Charitable Trust cases. However, these warnings are hard to find. Therefore, we propose that the Charity Commission, HMRC and the regulators of exempt charities engage in an awareness campaign to ensure that CASC’s, charities and charity trustees are made aware of the risks and potential personal liability from abusive schemes.

**Local authority discretion to award ‘next in use’ exemption**

We are uncomfortable with any proposal to replace a statutory scheme with a local, discretionary scheme. This risks inconsistency between local authorities. Empty Properties Business Rates relief, including relief arising from the ‘next in use’ exemption should be applied consistently and nationally.

**Wider business rates avoidance and evasion**

***Questions 12 to 17:***

We are not in a position to provide any comment on these questions.

***18. Will the new information that will be made available to billing authorities allow them to better combat business rates avoidance and evasion? What kind of compliance activity will it allow billing authorities to carry out?***

We do not feel able to comment qualitatively on this question. However, our response to Question 11 is suggesting that an amendment be made to the ‘notifiable information’ requirements set out in Non-Domestic Rating Bill 2023, to enable billing authorities (via the VOA NDR reforms) to police compliance with the policy intentions behind the charity reliefs for unoccupied property.

***19. Do you think there is any other information held by HMRC or the VOA which would be useful for billing authorities to have to help them to combat avoidance and evasion?***

Please see our responses to Questions 11 and 18.

***20.Do you have specific views on how we can best ensure effective information sharing between billing authorities and the VOA/HMRC, once DBR and the VOA duty are in place?***

We are not in a position to comment with authority. However, we assume that relevant information will be held, securely and confidentially, on a shared platform and, by exception, urgent intelligence will be specifically shared.

**“Rogue” agents**

***Questions 21 to 23:***

We are not in a position to provide any comment on these questions.

1. We look forward to further discussions with officials, as appropriate, on the matters covered by our response.

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**Richard Bray**

**Chair, The Charity Tax Group**

**28 September 2023**

1. Charities with an income of under £5,000 in England and Wales are not required to be registered with the Charity Commission. However, we feel that charities with such a small income are unlikely to be in a position to occupy property. It is also likely that the ‘contrived’ charities that are referred to in Paragraph 2.7 of the Consultation Document would be unregistered with a very small income. [↑](#footnote-ref-1)
2. That is, subject to any statutory and discretionary rates relief that may have been due, had the property been occupied for the purposes of the particular charity. [↑](#footnote-ref-2)