

## **Business rate relief: recent cases**

### **Background- The current regime**

Charities currently enjoy the benefit of a mandatory 80% relief from the payment of business rates. The relief is attached to commercial properties that are used “wholly or mainly” for charitable purposes. Local Authorities may also award discretionary relief of a further 20%, if the premises are occupied for charitable purposes. This means that a charity will never have more than a maximum liability of 20% of the rates, but can pay less than this, or nothing.

A recent trend has emerged whereby charities are entering into lease arrangements with commercial landlords in order to take advantage of these tax reliefs. Landlords are liable to full business rates on properties that remain empty for more than three months. This has been a growing problem for property owners during the economic downturn. In order to combat this problem, landlords have been leasing premises to charities at a nominal rents in return for the charity taking on the business rate liabilities. The landlord then typically pays a premium or gives a donation to the charity representing a percentage of their tax saving.

If the charity is using the premises for a charitable purpose then no problems will arise. However, the following cases demonstrate the pitfalls for charities in entering into such lease agreements if the purpose of the occupation is not clear cut.

### **Recent Cases**

**Kenya Aid Programme:** Two charities have had their claims for rate relief challenged by local authorities in the High Court. In the first case (*Kenya Aid Programme v Sheffield City Council*), the High Court has recently allowed an appeal by the charity against an earlier court order to pay business rates of over £1.6 million. The charity had occupied two warehouses at a peppercorn rent to store furniture. The charity entered into a mutually beneficial arrangement with the landlord in which the landlord paid the remaining rates (20%) and gave a donation to the charity in return for the charity taking on the rates liabilities. The charity had spread furniture throughout the warehouses and had only used approximately 50% of the space available. The High Court upheld the appeal and held that the earlier decision had been flawed in focusing on whether it was necessary to occupy both premises and whether the charity was making efficient use of the space. The correct approach was to consider whether the premises are being used wholly or mainly for charitable purposes. The case has therefore been sent back to the lower court for further consideration.

**Public Safety Charitable Trust:** The second case provides further guidance on what constitutes charitable use. The Public Safety Charitable Trust (“PSCT”) had over 1,500 leases of premises in which it installed equipment to transmit safety messages to mobile phones. The equipment was not operated by staff, and the premises were otherwise unused. The charity entered into similar arrangements with landlords as Kenya Aid, paying a

peppercorn rent, and in some cases receiving a “reverse premium” in return for claiming rate relief. This was challenged by three local authorities on the basis that the charity was not using the properties for wholly or mainly charitable purposes. The High Court upheld the councils’ appeal that PSCT was not entitled to mandatory rates relief due to the properties largely being unused. The High Court construed the words “wholly or mainly used” as constituting the actual extent of the use, which must be substantially for the public benefit. It rejected PSCT’s argument that it should be based on the purpose of the use instead, and the charity was ordered to repay the outstanding rates, which amounted to over £2m.

In the most recent developments, the High Court has ruled that PSCT must be wound up and insolvency practitioners appointed. The Charity Commission has also launched statutory inquiries into both charities.

## **Sector Response**

There has been growing concern within the sector about the legitimacy of arrangements of the type seen in the Kenya Aid and PSCT cases. The Charity Commission has highlighted the risks to charities linked to business rates and have reiterated the need for charities to follow proper decision making processes before entering into tenancy agreements, especially if they are not physically occupying the premises. The Commission has been contacted by a number of local authorities that are concerned about similar schemes and where the property appears to be empty. However, others believe that a dangerous precedent is being set by local authorities interfering in how charities make decisions.

## **Wider Implications**

The recent cases demonstrate that charities must be able to show that they are occupying property for wholly or mainly charitable purposes to be able to qualify for rate relief. Charities need to think carefully before entering into mutually beneficial arrangements with landlords and should consider the following before doing so:

- That the agreement furthers the charity’s objects and that the property is needed.
- That the independence of the charity is not being jeopardised.
- The potential liability to the charity in the event that that relief is revoked.
- Taking professional advice before entering into a tenancy agreement.

In addition, local authorities can now keep half of any increase in business rates income that they generate. This may lead to local authorities becoming more aggressive on suspected avoidance in the future. Further challenges to mandatory relief are therefore likely, which could have a disastrous affect on smaller charities that rely heavily on such reliefs.

For further information, please contact:

### **Hannah Lyons**

Trainee Solicitor

+44 (0)20 8394 6493

Hannah.Lyons@russell-cooke.co.uk

### **Mary Cheves**

Partner

+44 (0)20 8394 6465

Mary.Cheves@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.  
© Russell-Cooke LLP July 2013

**[www.russell-cooke.co.uk](http://www.russell-cooke.co.uk)**