

Virtual assignments and alienation covenant

Inside this issue:

Landlord and Tenant: Virtual Assignments and lease covenant not to assign 1/2

Administration: Administrators must pay lease rents as expense of administration 3/4

Pre-Budget Coverage 2009: Property issues Tax business 5/10

A "virtual assignment" is an arrangement by which all the economic benefits and burdens of a lease (including any management responsibilities) are transferred to a third party without an assignment of the leasehold interest or a change in the occupancy of the premises in question.

Summary

In summary, the tenant (NatWest) had virtually assigned the lease of the property (Lease) to the virtual assignee (New Liberty), without the consent of the landlord (CHL). The whole of the property was underlet to Mercer.

The purpose of the virtual assignment was to transfer the economic benefits and burdens of NatWest's interest in the property, including any management responsibilities under the Lease, to New Liberty.

Under the virtual assignment:

- The underlease rent paid by Mercer belonged to New Liberty.
- New Liberty had to pay the rent due under the Lease to CHL and to observe and perform the Lease covenants.
- New Liberty had to indemnify NatWest against non-payment of the rent and any breach or non-observance of the Lease covenants.
- NatWest appointed New Liberty as its agent in all dealings connected with the property.

The High Court decision

The High Court held that, by virtually assigning the lease to New Liberty, NatWest had:

- Breached the covenants in the Lease against parting with or sharing possession of the property.

- Not breached the covenants in the Lease against:
 - making a declaration of trust in respect of the property or the Lease;
 - assigning the Lease without consent; or
 - underletting the property without consent.

The issues on appeal

NatWest appealed against the High Court's decision that the virtual assignment breached the covenant not to share or part with possession.

By a respondent's notice, CHL argued that the High Court should also have found that the virtual assignment breached the covenants not to execute a declaration of trust, assign or underlet without consent.

Decision of the Court of Appeal

The Court of Appeal overturned the High Court decision and allowed NatWest's appeal. By virtually assigning the Lease to New Liberty, NatWest had not shared or parted with possession of the property (or any part of the property).

None of the grounds set out in CHL's respondent's notice succeeded. The Court of Appeal upheld the High Court's decision: there was no breach of the covenants against executing a declaration of trust, assignment or underletting without landlord's consent.

Not to share or part with possession

The Court of Appeal adopted the following approach:

"Possession" must be given the same meaning in respect of sharing possession and parting with possession.

As "possession" is a common phrase in a standard alienation clause, it must be given its normal (but technically legally correct) meaning. "Possession" should therefore

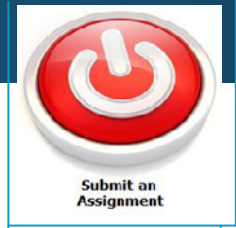


T 01480 454301
F 01480 408740



Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



mean the right to exclude all others from the property.

Adopting this standard strict meaning, there would only be a breach of the covenant:

- against sharing possession, if NatWest had allowed New Liberty to enjoy joint possession of the property; or
- against parting with possession, if NatWest wholly ousted itself or completely excluded itself from the legal possession of the property for all purposes.

At all material times, Mercer (and not NatWest) has been in possession of the property. NatWest had therefore not "parted with" or "shared possession" with New Liberty.

Previous case law (for example, *Stening v Abraham* [1931] 1 Ch 470; *Lam Kee Ying and Akici*) was consistent with the principle that a covenant against parting with or sharing possession was concerned with whether the tenant had allowed another person into physical occupation with the intention of relinquishing his own exclusive possession of the premises to that other person.

For some purposes, possession means the receipt of (or the right to receive) rents and profits of land (section 205(1) (xix), Law of Property Act 1925 (LPA 1925)). However, the Court of Appeal held that New Liberty:

- Had not, when collecting rent as NatWest's agent, received that rent as the person in possession of the Property.
- Did not have the "right to receive" rent as the person in possession of the Property.

New Liberty collected the underlease rent from Mercer as agent for NatWest and in NatWest's name. Had Mercer refused to pay the underlease rent, it would be NatWest who could sue Mercer for the arrears. At the moment of receipt by New Liberty, the underlease rent was held for NatWest. Following receipt, the underlease rent transformed into money received to the account of New Liberty.

The virtual assignment was a purely contractual arrangement, which did not transfer the right to "receive rents and profits" to New Liberty (in the sense of section 205 of the LPA 1925).

The Court of Appeal also noted that a landlord may assign the right to receive the rent, without assigning the reversion (*Kataria v Safeland Plc* [1998] 1 EGLR 39). Therefore, even if New Liberty had the right to receive rent, this was as the

assignee of a chose in action (and not as assignee of the Lease).

The Court of Appeal concluded that NatWest had not, by entering into the virtual assignment, breached the covenant against sharing or parting with possession.

Not to execute any declaration of trust

The High Court judge was correct: there was no breach of the covenant against executing a declaration of trust.

The cornerstone of the arrangements was agency. New Liberty had taken both the economic benefits and the burdens, including responsibility for managing the property. The virtual assignment had not created a trust.

Not to assign without landlord's consent

The High Court judge was correct: there was no breach of the covenant against assignment without landlord's consent.

The covenant in the Lease not to assign was referring to an assignment of the legal interest only (*Gentle*). At most, New Liberty had the power to call for an assignment or to effect an assignment as NatWest's agent. However, any such assignment was conditional on CHL's consent.

Not to underlet without landlord's consent

The High Court judge was correct: there was no breach of the covenant against underletting without landlord's consent.

There was no privity of estate between NatWest and New Liberty.

Commentary

Large corporate tenants have been using virtual assignments as part of complex group arrangements to achieve financial savings and operational efficiencies. The schemes often involve offshore entities as the virtual assignee. They will be relieved that such arrangements are not now considered to be in breach of alienation provisions which prohibit parting or sharing with possession.

Landlords may be uneasy about the possibility of a virtual assignment circumventing aspects of the landlord and tenant relationship. For example, a landlord may be concerned about underlease rent being diverted to a virtual assignee and the effect that this might have on the tenant's covenant strength.



T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk



Administrators must pay rent as expenses

What are administration expenses?

A company in administration may incur liabilities to third parties, arising either from obligations that it had before it entered administration or from obligations arising from administrator's actions.

Rule 2.67 of the Insolvency Rules 1986 (1986 Rules) classes some of the liabilities that the company incurs to third parties as expenses of the insolvent estate.

An administrator pays the expenses of the administration from the assets of the insolvent company, before he makes any payment to:

- Preferential creditors
- Creditors with floating charges over the assets of the insolvent company.
- Unsecured creditors.

Typically, if a liability ranks as an expense, the administrator will settle it in full. This means that the liability is not treated as an unsecured creditor claim against the company, which usually receives a minimal amount by way of settlement.

Many companies occupy leasehold premises and a key commercial question for an administrator is often whether to pay the rent as an expense of the administration. Landlords cannot take steps to forfeit the lease of a company in administration without first obtaining the administrator's consent or the permission of the court (paragraph 43, Schedule B1, 1986 Act). This means that, in effect, a company in administration can occupy leasehold premises, for a period of time, rent-free.

The practice of some administrators is not to consider whether to meet rent as an expense of the administration until the landlord demands rent or threatens to seek leave to forfeit the lease.

The relevant case law

In Innovate Logistics Limited (in administration) v Sunberry Properties Limited [2008] EWCA Civ 1261 (Innovate), the Court of Appeal held that, when a landlord sought leave (either directly from the administrator or from the court) to forfeit a lease held by a company in administration, the

correct approach was to balance the right of the landlord to have the leasehold property returned to it against the benefit to the creditors of the company in administration arising from the company having the continued use of the property.

The Court of Appeal in Innovate followed the approach of the Court of Appeal in AIB Capital Markets Plc & Anor v Atlantic Computer Systems Plc & Ors [1990] EWCA Civ 20 (Atlantic Computers).

Atlantic Computers was in administration under the regime that existed before the Enterprise Act 2003 inserted the provisions of Schedule B1 into the 1986 Act. Under the pre-Enterprise Act regime, there was no definition of administration expenses of the kind set out in rule 2.67 of the 1986 Rules and the administrator decided which liabilities were an expense of the administration, subject to the supervision of the court, on a case by case basis.

The wording of rule 2.67 of the 1986 Rules is similar to the wording of rule 4.218 of the 1986 Rules.

Rule 4.218 of the 1986 Rules defines the classes of liability that rank as an expense of a liquidation.

In the context of a liquidation, the question of whether a liability ranks as an expense is answered by considering the nature of the liability itself. If the liability arises by the company in liquidation using the asset of a third party for the benefit of creditors, the liability ranks as an expense (In Re Lundy Granite Co., ex p. Heaven (1871) 6 Ch App 462 (Lundy Granite)).

The High Court has applied the approach in Lundy Granite in the context of a company in administration (Exeter City Council v Bairstow [2007] EWHC 400 (Ch) (Trident Fashions)) and, obiter, in Lomas and others v RAB Market Cycles (Master) Fund Limited and others [2009] EWHC 2545 (Ch) (Master Cycles);

Facts

N Limited, a company in administration, occupied leasehold property under a lease between N Limited and its landlord, G Limited. The administrators of N Limited only needed to occupy a small proportion of the total premises to carry out their duties as administrators.

G Limited applied to the High Court for an order directing that the administrators pay the rent under the lease as an expense of N Limited's administration. G Limited argued that, following Lundy Granite, once N Limited's administrators caused N Limited to use the



T 01480 454301
F 01480 408740



Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



premises for the benefit of creditors, the rent automatically became an expense of the administration.

The administrators of N Limited argued that a liability of a company in administration was not an expense of the administration until the administrators or the court accepted it as such. If the ranking of a liability as an expense arose from the company's use of an asset for the benefit of creditors, the administrators argued that the amount of liability that ranked as an expense was determined by the extent to which the company in administration used the asset.

In this case, because N Limited occupied only part of the premises, N Limited's administrators argued that only a proportion of the rent payable under the lease should rank as an expense of the administration.

Decision

The High Court held that the administrators must pay the entire rent payable under the lease as an expense of N Limited's administration.

The High Court followed the approach in Trident Fashions and Master Cycles and held that, where a company in administration uses leasehold property for the benefit of creditors, the rent payable under the lease ranks as an expense of the administration. The principle in Lundy Granite applies in the context of administration as well as liquidation.

In this case, as N Limited occupied the premises to allow the administrators to carry out their functions for the benefit of creditors, the rent under the lease was an expense of the administration. Specifically, the occupation of the premises for the benefit of creditors made the rent a "necessary disbursement" of the administration, within the scope of rule 2.67(1)(f) of the 1986 Rules.

The High Court rejected the administrators' argument that the amount of rent payable as an expense should be reduced because N Limited only occupied a small part of the leased premises. The High Court held that, if an administrator caused a company in administration to occupy leasehold property for the benefit of creditors, that occupation was subject to the full terms and conditions of the lease. The court did not have jurisdiction to apportion the rent as a result of how much of the premises the company occupied.

Commentary

The High Court's decision strengthens the commercial position of landlords faced with a tenant in administration. If the administrators cause the insolvent company to use the

premises for the benefit of creditors, the administrators must pay the full rent falling due under the lease as an expense of the administration. The rent ranks as an administration expense from the point that the administrators cause the insolvent company to use the premises for the benefit of creditors. Following the approach of decisions in relation to companies in liquidation, the concept of "use" is a wide one and will almost certainly include allowing a purchaser of the business and assets of the insolvent company into occupation of the premises under a licence to occupy.

The High Court reconciled its decision with that of the Court of Appeal in Innovate, by emphasising that Innovate was solely concerned with the principles that apply where a landlord seeks permission to take action against a company in administration, notwithstanding the moratorium in favour of the company created by paragraph 43 of Schedule B1 to the 1986 Act.

In Innovate, the parties agreed to proceed on the basis that rent did not automatically rank as an administration expense, but the Court of Appeal made no formal finding to that effect.

Innovate remains authority that the principles set out in Atlantic Computers apply to applications to lift the statutory moratorium in favour of companies in administration, but the decision of the High Court is that those principles have no relevance to the question of whether a liability ranks as an expense of an administration.

The decision does not mean an end to companies in administration being able to occupy premises for a time without paying rent. Rather, it establishes the priority of the liability of a company in administration to pay rent. However, it does not oblige the administrator to pay the rent immediately upon it falling due, if the administrator does not have sufficient funds to do so.

The decision means that prospective administrators, when considering the strategy for the administration of an insolvent company, must make suitable arrangements to meet the company's liabilities in relation to leasehold property.



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



Pre-budget Report - 2009/10

VAT

The 2008 Pre-Budget Report announced a temporary reduction in the standard rate of VAT from 17.5% to 15%. This measure was to last until 31 December 2009.

In spite of calls for an extension of the VAT reduction period, the 2009 PBR confirms that the standard rate of VAT will revert to 17.5% on 1 January 2010.

SDLT

SDLT: "holiday" over

The 2009 Budget stated that the temporary increase in the SDLT threshold to £175,000 for residential properties (announced on 2 September 2008) would be extended until 31 December 2009, instead of ending on 2 September 2009 and SDLT threshold on residential property increased to £175,000 and other housing measures announced.

It was hoped that the Government would extend this SDLT "holiday" further, but the 2009 PBR confirms that the SDLT threshold will revert to £125,000 for residential properties on 1 January 2010.

SDLT: disclosure regime and residential property

The Government has announced that regulations will be introduced to extend the Disclosure of Tax Avoidance Schemes (DOTAS) rules to require the disclosure of certain SDLT avoidance schemes that concern residential property with a value of at least £1 million.

Since 1 August 2005, promoters of certain schemes aimed at avoiding SDLT on commercial property transactions with a value of at least £5 million have been obliged to disclose those schemes to HMRC. The SDLT disclosure regime adopts the same basic form, (and is implemented under the same primary legislation, as the direct tax disclosure regime).

The regime does not currently require the disclosure of pure residential property SDLT avoidance schemes (although schemes to save SDLT on transactions involving both residential and non-residential property are discloseable if the value of the non-residential property is at least £5 million). Nor does the regime currently require users of SDLT schemes to identify themselves to HMRC through the scheme reference number (SRN) system, a requirement that does apply to users of direct tax avoidance schemes.

As part of the 2009 Budget, HMRC issued a consultation paper indicating that the Government intended to introduce

regulations extending the SDLT disclosure regime to residential property transactions with a value of at least £1 million of the regime would include a mechanism for identifying users of the schemes that were disclosed.

The Government has announced that it is to go ahead with the proposed extension of the SDLT disclosure regime. Regulations will be made in early 2010 and will come into effect no later than 1 April 2010.

The regulations will amend the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations (SI 2005/1868) so that:

- The disclosure provisions will apply to schemes that concern either:
 - non-residential property with an aggregate value of at least £5 million; or
 - residential property with an aggregate value of at least £1 million.

The disclosure provisions will also apply to schemes that concern mixed non-residential and residential property where either:

- the value of the residential property is at least £1 million; or
- the value of all the property is at least £5 million.

Grandfathering provisions will apply so that there will be no obligation to disclose schemes made available for implementation before these changes come into effect.

This rule will also apply to grandfather schemes that are "substantially the same" as schemes made available before the start date.

In addition, if a user of a SDLT avoidance scheme (in relation to commercial or residential property), expects to obtain a SDLT advantage from the scheme, they will be required to report the scheme to HMRC. This must be done (before the start date) using a form that will be published on HMRC's website.

Business rates

Empty property relief

For the year 2010/11, empty commercial properties with rateable values of up to £18,000 will be exempt from business rates.



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



The Rating (Empty Properties) Act 2007 (REPA 2007) removed business rates relief for most unoccupied properties with effect from 1 April 2008. REPA 2007 was widely criticised by the property industry as an additional strain on businesses in a time of economic difficulty.

In response to this criticism, the 2008 Pre-Budget Report announced that empty properties with rateable values of up to £15,000 would be exempt from business rates for the year 2009/10.

The exemption was implemented with effect from 1 April 2009 by the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2009 and the Non-Domestic Rating (Unoccupied Property) (Wales) (Amendment) Regulations 2009.

This resulted in an estimated 70% of empty commercial properties being exempt from paying business rates.

The 2009 PBR announces that the temporary increase in the threshold for empty property relief will be extended for a further year and the threshold increased to £18,000. This higher threshold reflects the effects of the 2010 business rates revaluation.

However, despite pressure from the property industry, the Government continues to assert that, in the long term, it is right to charge rates when properties stand empty. A rating charge encourages owners to re-let and reuse empty property, and owners of empty properties should not expect subsidy.

Environment

Energy efficiency and fuel poverty

In the 2009 PBR, the Government has announced that £200 million will be made available to improve energy efficiency and tackle fuel poverty by:

- Offering a £400 incentive to help up to 125,000 households upgrade their old boilers. The scheme is available for those who replace their current working G-rated boiler with either:
 - a new boiler; or
 - a renewable heat unit.

The Government hopes to launch the scheme during 2010.

Providing cavity wall insulation for 108,000 properties in the social sector by the end of 2011.

This restates the Government's commitment, announced in the 2009 Budget, to improve insulation in 150,000 social sector homes.

Providing an extra £150 million for Warm Front to help 75,000 of the most vulnerable households with heating and insulation.

Microgeneration payments

Households that generate low-carbon electricity on a small scale through renewable technology (such as micro wind turbines and solar panels), will now benefit from preferential rates when selling the electricity back to the national grid.

The feed-in tariff (FIT) for microgeneration, worth an average of £900, is aimed at encouraging homeowners to use renewable technology to meet their own energy requirements.

The Government has also confirmed that the income received by those who generate small-scale renewable electricity mainly for their own use, will not be subject to income tax on the FIT. Legislation will be introduced with effect from 1 April 2010 to ensure the tax-free treatment of such income.

Smart meters

The Government has confirmed that, in line with the announcement by the Department of Energy and Climate Change (DECC) on 2 December 2009, smart meters will be rolled out to every home and small business by the end of 2020.

Housing

Mortgages

The Government wants to ensure that repossession is a measure of last resort. The Mortgage Rescue Scheme and Homeowner Mortgage Support scheme provide targeted help for those who have exhausted all other options.

There will be a freeze in the Standard Interest Rate used to calculate Support for Mortgage Interest at 6.08% for a further six months, benefiting an estimated 220,000 homeowners.

Lifetime homes standard

Lifetime homes standard (LHS) is part of a new sustainable housing strategy designed to give older people greater choice in the housing market and to



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



address the challenges for housing an ageing population.

Early in 2010, the Government will consider the case for regulation of LHS and what form any regulation should take. Any move to make LHS mandatory is not expected until 2013 at the earliest.

Improving the supply of housing

In the 2009 Budget, the Government confirmed its commitment to address the long term challenge of increasing housing supply, and to achieve its target of 240,000 new homes per annum by 2016.

The Government confirmed its support for increasing the supply of social and affordable housing in Building Britain's Future.

The 2009 PBR states that the Government will:

- Make more land available for development through improving local authorities' five year land supplies by undertaking comprehensive checks, publishing results and withholding incentive funding if they are not in place, to ensure an efficient and effective supply of viable land for development.
- Ensure that house building is not unduly constrained by regulation.
- Examine the scope for local authorities to borrow against revenues from new council homes to support delivery of housing where this offers value for money.
- Consider wider reforms to the council housing finance system.
- Study the drivers of housing growth and the steps it, or the industry, could take to improve diversity and innovation. The Government will report by the 2010 Budget.

Private rented sector

The 2009 PBR announces that the Government will issue a consultation document early in 2010 which will build on the work of the Rugg Review.

The consultation will consider the contribution the private rented sector could make to addressing demand and increasing housing supply, and any barriers to investment.

The Government believes that a growing private rented sector can play an important role in increasing housing supply and meeting the need for a range of high quality

housing tenure choices.

The Government's aim is to provide a long term strategy for:

- Developing a quality alternative to buying.
- Providing a safety net for the vulnerable and those on low incomes.
- Striking a balance between the rights and responsibilities of both landlords and tenants.
- Encouraging private investment in the private rented sector.

Social housing

Local authority rent increases

The 2009 PBR announces that the average guideline rent increase for 2010/11 will be reduced from 6.1% to 3.1% for all local authority residential tenants.

This is intended to encourage local authorities to set rents that are affordable and fair for their tenants but at the same time ensuring that local authorities have sufficient resources for the coming financial year.

Local authority housing allowance

The Local Housing Allowance (LHA) was introduced in April 2008 to give Housing Benefit recipients more control over, and responsibility for, their choice of housing.

However, the way that rates were set in the LHA meant that tenants in some areas benefited more than tenants in others.

This discrepancy was blamed for driving up the costs compared with the previous housing benefit scheme. To control these rising costs, the 2009 Budget announced that, from April 2010, households would no longer be able to retain any of the surplus if the LHA that they received was higher than their rent.

However, recent consultation suggests that there are disadvantages to withdrawing the excess. The Government will therefore delay the reform until April 2011, and will launch an immediate consultation on its approach to housing benefit reform and affordability.

The Government will also introduce a package of administrative reforms covering the LHA scheme, which is estimated to save around £100 million per year by 2012/2013. This includes measures to reduce the scope



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



for fraud and error across the benefits system to ensure recipients receive the correct payments.

HomeBuy Direct and social housing investment
The Government is to extend the shared equity scheme, HomeBuy Direct, providing further help for first-time buyers. Over £150 million total investment for HomeBuy Direct will be made available in 2010/2011, by bringing forward funding from 2009 and prioritising housing for first-time buyers within the Kickstart programme.

Holiday lettings

Repeal of the furnished holiday letting rules

Background

In general, the income generated from letting is taxed under the rules for property businesses. However, the furnished holiday letting rules (FHL rules) allow furnished holiday lets to be treated as a trade for some tax purposes, subject to certain conditions.

As part of the 2009 Budget, the Government published a technical note on furnished holiday lettings (FHL) in the European Economic Area (EEA). The Government acknowledged that:

- Landlords with income from furnished holiday lettings within the EEA (but outside the UK) did not qualify for the same tax treatment as those with furnished holiday letting properties within the UK.
- The different tax treatment might not comply with European law.

The Government's approach to dealing with this inconsistency was temporarily to allow furnished holiday lettings in the EEA to have the same tax treatment as furnished holiday lettings in the UK, with a view to repealing the FHL rules for the tax year 2010-2011.

In the 2009 PBR, the Government confirmed that legislation will be introduced in the Finance Bill 2010 to withdraw the FHL rules. The change will take effect on 6 April 2010 (1 April 2010 for companies) and, from then on, businesses that let furnished holiday properties will be subject to the same tax treatment as other property businesses.

Implementing the repeal

The repeal of the FHL rules will affect various aspects of the tax system, including:

- Capital allowances.

- Wear and tear allowance.
- Loss relief.
- Landlord's Energy Saving Allowance.
- Certain capital gains reliefs.
- Relevant UK earnings when calculating the maximum relief due for an individual's pension contributions.

The FHL impact assessment is a consultation impact assessment and HMRC states that it welcomes any information that is relevant to the final version of the impact assessment. HMRC is also seeking comments on the draft legislation, in particular views on how effectively it implements the Government's decision to repeal the FHL rules. Details of how to respond are contained in the draft FHL legislation and the FHL impact assessment. Comments on these documents should be sent by 26 February 2010.

Infrastructure

Asset management and sales of public buildings

The Government intends to realise £16 billion from asset and property sales by the end of 2014.

The Government has concluded that a partial or full sale of the Dartford Crossing and High Speed 1 is the right approach. The necessary processes for the sale of the Dartford Crossing will start in summer 2010. Preparations for sale of High Speed 1 are advanced and the sale process is to be launched as soon as practicable following the introduction of domestic services on the line in December 2009.

The Government has created a strategic property team within the Shareholder Executive to undertake a strategic review of different public sector estates management and ownership options. This includes assessing the feasibility of creating one or more property companies to own and manage portfolios of public sector properties to maximising efficiency.

To improve the incentive for more effective asset management planning and to lock-in the benefits of the significant growth in capital investment since 1997/98, the Department for Communities and Local Government will:

- Progress the technical aspects of introducing a formal depreciation-based funding scheme in the local government sector.
- Report on progress in the 2010 Budget.



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



Community Infrastructure Levy

To support local infrastructure provision, the Government has indicated that it will shortly announce detailed arrangements for the implementation of the Community Infrastructure Levy (CIL) from April 2010.

The Government is also interested in exploring what further finance mechanisms, powers and flexibilities could support local authorities to drive growth effectively. In particular, the Government will examine the scope for local authorities to borrow against the following:

- Future CIL revenues.
- Renewable Heat Incentive and Feed-in Tariff (FIT) revenue streams.
- Revenues from new council homes.

After a transitional period, it is intended that section 106 requirements will be scaled back, as part of CIL implementation. The Government will consult early in 2010 on the appropriate use of section 106 agreements.

Revised Planning Policy Statement for Economic Development

The Government will soon publish a revised Planning Policy Statement for economic development to ensure that planning applications that secure sustainable economic growth are given favourable consideration.

Infrastructure UK

In the Government's draft legislative programme published in June 2009, the Government announces its intention to establish an advisory body "Infrastructure UK" to identify the country's long term infrastructure needs across a 5 to 50 year horizon.

The 2009 PBR confirms that the Government will establish Infrastructure UK, which will work with government departments, private sector infrastructure investors, contractors, operators and independent regulators.

Infrastructure UK will bring together The Infrastructure Finance Unit (TIFU), HM Treasury's Public-Private Partnership (PPP) policy team and Partnerships UK (PUK). Infrastructure UK will be based in HM Treasury.

The following are the immediate priorities for Infrastructure UK:

- To develop a strategy for the UK's infrastructure over

the next 5 to 50 years. This will be published in 2010 Budget.

- To work with infrastructure developers and funders to make recommendations in the 2010 Budget to stimulate increased private sector investment in infrastructure, with a particular focus on "unlocking new sources of private capital and developing new funding models".
- To manage the Government's investment in the 2020 European Fund for Energy, Climate Change and Infrastructure.
- To support HM Treasury in prioritising the Government's investment in infrastructure, to ensure "value for money is achieved".
- To work with the Office of Government Commerce and other government departments to "support the delivery of major infrastructure projects and programmes and to build stronger infrastructure delivery capability across government".
- To support HM Treasury and the Department of Energy and Climate Change to report on how to ensure the electricity market framework can most effectively deliver low-carbon investment, and to explore the need for a low-carbon institution.
- To work with the Department for Transport on responding to proposals for a new high speed line to the West Midlands.
- To support the Department for Business, Innovation and Skills (BIS) in delivering a Universal Service Commitment in broadband by 2012 and providing further support to achieve private sector roll-out of next generation broadband to 90% of the population by 2017.

Support for investments

To support and facilitate investment that enables economic growth, the Government will proceed with the following:

- A £1.1 billion rail electrification programme for the Great Western Main Line and Liverpool to Manchester line.
- The £400 million M1 improvement scheme (work to begin in December 2009).



Lexcel
Practice Management Standard
Law Society Accredited

T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk

Leeds Day Commercial Property Quarterly Briefing Update - Winter 2009/10

Providing intelligent legal solutions



The Government will also:

- Continue to evaluate the case for electrification of the Midland Main Line from London to Sheffield.
- Respond in the first quarter of 2010 to proposals for a new high speed line from London to the West Midlands and to Scotland. The Government will be assisted in this by the proposed Infrastructure UK (see note, Establishing Infrastructure UK).
- Publish measures to reform the economic regulation of airports to encourage investment in airport infrastructure.

The Government is currently in discussions with industry about the economics of developing infrastructure to exploit oil and gas reserves in the area to the west of the Shetland Islands.

City regions

In the 2009 Budget, the Government announced two new pilot city-regions in Greater Manchester and Leeds. The Government was to work with the pilots (and interested local authorities) to assess how regeneration could be financed from property taxes, and to report on its findings in the 2009 PBR.

The 2009 PBR reports on the early findings and indicates that further reports will be given in the 2010 Budget. Agreements have been reached with:

- Greater Manchester, which is designated as the UK's fourth low-carbon economic area specialising in the built environment.
- Leeds, which is given greater control over housing and regeneration funding.

Contacts

For further information, please contact your usual Leeds Day contact or

Christopher Dodd
Solicitor
01480 442026
christopher.dodd@leedsday.co.uk

PUBLICATION NOTE: Some or all of the content contained in this briefing note might be reproduced from material originally published by PLC and is reproduced with the permission of Practical Law Company Ltd. (www.practicallaw.com).



T 01480 454301
F 01480 408740



Providing intelligent legal solutions Providing intelligent legal solutions Providing intelligent legal solutions

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

www.leedsday.co.uk