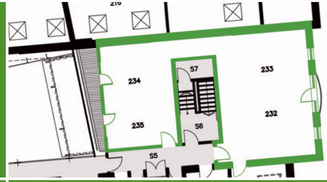

Briefing Note **Empty Rate Relief – the impact of reforms on the Code for Leasing Business Premises**

This Briefing Note is not part of the Code for Leasing Business Premises

At around the time of the launch of The Code for Leasing Business Premises in England & Wales, 2007 ('The Code'), the Government announced its intention to reform Empty Rate Relief to take effect from 1st April 2008.

The backdrop to the launch of the Code was characterised by gradually shortening average lease lengths, increasing flexibility for tenants, initiatives by the British Property Federation and others to encourage landlords to relax restrictions on assignment and subletting to permit transactions on the basis of market values, and increasing trends among larger landlords to begin to treat tenants as customers.

Empty Rates are the amounts of National Non-Domestic rates NNDR (as defined on the Valuation Office Agency's website: www.voa.gov.uk) **payable when the property is empty.**

Until April 1st 2008, empty industrial property did not attract empty rates, whereas empty office and retail property were charged at 50% rate following a 3 month exemption.

With effect from April 1st 2008, empty industrial property is exempt for six months from the date they became unoccupied, after which time it will be charged at the full rate; whereas empty offices and retail property will be charged at the full rate following a 3 month exemption period.

The reform of empty rates increases the rating liability for empty properties, following an initial exemption period, to the level applicable when premises are fully occupied. The cost of holding most empty properties has therefore increased and, for those leases that were taken up before this measure was anticipated, the cost and risk may not have been accommodated in the transaction between owner and occupier.

It would be reasonable to assume there will be an effect on new leases and, as a consequence, on the commercial relationship between owner and occupier. Whilst the Code calls for flexibility, both owners and occupiers need to understand the potential for increased risks (and costs) associated with that flexibility. By way of example, an owner may consider it appropriate to seek an increased rent for a shorter lease term to cover or contribute towards the risk of space becoming vacant sooner. On the other hand occupiers should press hard for flexibility to assign or sublease, without unreasonable restrictions, so that they can mitigate the increased holding costs associated with surplus space.

Clearly, therefore, both occupiers and owners need to carefully consider the issues that this legislation raises. On the one hand occupiers should take care to seek prices for varying levels of flexibility, mindful that, in an inflexible lease, they could be responsible for the full business rate liability following the exemption period.

On the other hand, owners should quantify the risks of void periods (when there is no-one occupying the property) and be explicit about who is expected to bear the costs of any empty rates liability when offering terms to, and agreeing heads of terms with, a prospective occupier.

As a general guide, both owner and occupier should avoid resorting to clauses that seek to change the burden of the tax from the party or parties who would be responsible under the terms and spirit of the legislation – in other words, the default position should be that the burden of tax lies where it falls.

If you are in any doubt as to how this legislation may affect your business, please take advice from an appropriately qualified professional chartered surveyor and/or lawyer.