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TAX REMINDER FOR COMMERCIAL TENANTS

BY TESSA HASKEY

Stamp Duty Land Tax replaced Stamp Duty on 1 December 2008. Where has the time gone? Tenants who completed their leases around 5 years ago, and who have rent reviews in progress or pending may have to submit a new SDLT return to H M Revenue and Customs, as additional tax may be due. However, this only applies where there is an abnormal increase in rent (greater than 5% p.a. plus RPI). Whilst it may be unlikely that rents will increase markedly in the current climate, if rents were kept artificially low to avoid SDLT in 2003 (for example by increasing the premium), tax may be due on the review. Please do contact us if you think that you are affected. Please note that the Revenue automatically charge a £100 fine for late submission of a return, and interest will accrue on outstanding tax.

NOTICE REMINDER FOR COMMERCIAL LANDLORDS

In the current uncertain economic climate, landlords need to be sure that they can recover any rent arrears from former tenants, if their current tenant fails to pay the rent.

If a tenant defaults, a landlord cannot claim rent arrears from a former tenant, unless within 6 months of the rent falling due, he serves a Section 17 Notice on that former tenant, specifying the arrears.

However, following the recent case of *Scottish & Newcastle v Raguz [2007]*, if a rent review is pending, Landlords must serve protective Section 17 notices within 6 months of each rent day, **even though there are no arrears** at that stage. This notice should say that the sum intended to be recovered is "nil", but notifying the Tenant that there is the possibility of the rent being determined at a greater amount.

This is followed by a further notice within 3 months of the date when the rent is finally determined. This will preserve the Landlords' right to claim the reviewed rent from a former tenant should the current tenant fall into arrears. This is clearly going to create an administrative burden for landlords with large portfolios.

If you would like to add your name or those of your colleagues to our circulation list to receive legal updates or information on seminars, please contact Lucy Najid on 01603 762103/lucy.najid@howespercival.com or visit our website at www.howespercival.com

ENERGY PERFORMANCE CERTIFICATES BY TONY BREWSTER

The new Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 lay down four requirements:

- Energy Performance Certificates ('EPCs') and recommendations for improvement of energy performance of buildings have to be produced when buildings* are constructed, sold or rented out.
- Display Energy Certificates ('DECs') have to be displayed in larger buildings occupied by public authorities and by institutions providing public services to and visited by a large number of persons, and advisory reports with recommendations for improvement for the energy performance of the building have to be produced.
- Air-conditioning systems have to be inspected at regular intervals not exceeding five years.
- Energy Assessors carrying out inspections and producing the certificates have to be accredited.

Implementation will be in stages:

6 April 2008

- EPCs required on construction for all dwellings.
- EPCs required for all commercial buildings with a floor area over 10,000m² when built, sold or rented.

1 July 2008

- EPCs required for all commercial buildings with a floor area over 2,500m² when built, sold or rented

1 October 2008

- EPCs required for the sale or rent of all remaining dwellings.
- EPCs required on the construction, sale or rent of all remaining buildings other than dwellings.
- Display Energy Certificates required for all public buildings up to 1,000m²

Breach of the Regulations will be a civil offence. Penalties for failing to provide the EPCs vary from £500 to £5,000, for failure to display a DEC £500 and for failure to have an air conditioning system inspected £300.

Energy Performance Certificates ('EPC')

EPCs will indicate the "asset rating" of a building expressed by reference to a scale of A – G (A being good and G being poor). There is no standard form although the Regulations prescribe minimum requirements.

An EPC will be valid for ten years or, if earlier, the date when the owner obtains a more recent one.

** Regulation 4 provides exceptions to the duty to provide an EPC. The exceptions are: places of worship, temporary buildings with planned time of use of less than 2 years; buildings with low energy demand; and stand-alone buildings of less than 50m² (except for dwellings).*

EPCs will be accompanied by a "recommendation report" suggesting improvements to the performance of the building (although no-one will be under any duty to act on these reports). Responsibility for the production of an EPC rests with the owner who must make the certificate available (at its own cost) to any prospective buyer or tenant at the earliest opportunity and in any event before entering into any contract to sell or rent the building. In practice this means that the EPC must be available before the building is first advertised and marketed.

Individual dwellings within blocks must have their own EPCs (which may be based on an assessment of another representative unit in the same block). The common parts in the building must be subject to separate certification. For non dwellings, it is sufficient to use a common certification for the whole building or to certify individual units by reference to another representative unit in the same block. It is conceivable that there may be a number of different EPCs for different representative units in a large mixed use building.

Display Energy Certificates ('DEC')

DECs must be displayed by occupiers to buildings with a total useful floor area that exceeds 1,000 square metres, where the occupier is either a public authority, or is an institution that provides public services to a large number of persons and is frequently visited by these persons.

DECs must be displayed prominently in place that is clearly visible to members of the public. They will provide information about "operational rating" of the building (i.e. the amount of energy actually consumed by the occupiers of the building) shown on a scale of A – G, so that members of the public can see how well the building is performing.

DECs are valid for 12 months and must be replaced annually. They must be issued by an energy assessor who is accredited to produce DEC's for that category of building. Ratings will be derived from meter readings indicating the amount of energy consumed in the building over any 12 month period.

Air conditioning systems

The Regulations require persons having control of air conditioning systems with a collective cooling capacity larger than 12kw (whether in dwellings or non dwellings) to ensure that the overall system is inspected by an accredited energy assessor at regular intervals not exceeding 5 years. This low threshold may apply to more systems than owners expect .

Systems already in service before 31 December 2007 with an effective rating output of more than 250kw must be inspected by 4 January 2009.

Systems already in service before 31 December 2007 with an effective rating output of more than 12kw must be inspected before 4 January 2011.

If the system is first put into service on or after 1 January 2008, the first inspection of the system need not take place until the last day of the period of 5 years beginning with the date on which the system is put into service.



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