The Non Domestic Rate
Current Issues

- Rate Retention
- Rate Avoidance
- Check Challenge and Appeal
- Decisions in the Courts
- Legislation
- The Hudson Review
- Rating – A system under pressure
Non Domestic Rates – a Quick Situation Report

- Dramatic change in England
  - The last revaluation
  - Check, challenge and appeal
  - Rate retention
  - Growing significance of the tax
  - Rate avoidance and fraud
  - The next revaluation

- A stable element of financing local government in Northern Ireland with a revaluation in 2015 and the next one in 2020 with a radical review paper

- In Scotland – Barclay

- In Wales - Devolution of the pool and a review
Non Domestic Rate in England

• The reality of the next revaluation
• Check, Challenge and Appeal must be made to work
• What of the pilot combined authorities and 100% retention?
• Where does Fairer Funding fit in?
• What of 75% retention and the bigger picture?
• What are HMRC up to?
What are the Wider Arguments about the Non Domestic Rate?

• Is it fair?
• Is it too much of a burden on the ratepayer?
• Is the assessment methodology appropriate to the 21st Century?
• The wider argument on the contribution that industry and business should make to local services or for that matter to the Exchequer generally.
Is There Anything Really Wrong with the Non Domestic Rate in England?

- The overall argument about the burden
- The breadth and depth of the tax base
- The structure of the tax base
- The distribution of liability in relation to the market
- The ability to pay
- The efficiency, effectiveness and accountability of the administration
Maintaining the Integrity of the Tax Base

- Statutory compliance
- Decision making in Billing Authorities
- Maintaining the quality of the tax base
- Maintaining the quality of the collection records
- Potential for challenge
- Ensuring financial compliance
- Keeping informed
Statutory Compliance

• Section 151 Officer
• The fiduciary duty
• Rules on involvement
• Check Challenge and Appeal
• Moving towards 75% retention
• Rating Law
  – Knowledge
  – Application
  – The duty to act
Decision Making in Billing Authorities

- Rateable occupation
- Empty property rate
- Exercising discretion
- Mandatory decisions
- Anticipating risk
- Measuring risk
- State Aid
Ensuring Financial Compliance

- Appropriate delegation
- Proper accounting
- Money laundering and non domestic rates
- Making provisions
- Managing the funds
- Respecting Revenue Outturn
- Cost of collection
- Managing the relationship with Major Preceptors
- Understanding the implications of 75% retention
Maintaining the Quality of the Collection Records

• Timely and correct billing
• The prejudiced ratepayer
• Recognising Encon
• Proper account management
• Arrears management
• Insolvency watch
• Inspection regime
• Cash flow management
Maintaining the Quality of the Tax Base

• Missing value
  – The integrity of the system
  – Equity between ratepayers
  – Equality between ratepayers
  – The incidence of the tax

• Mitigation of liability
  – Avoidance
  – Legal clarification
  – Case law
  – Precedents
The Right to Minimise Tax Liability

• The Westminster Principle
• Inland Revenue Commissioners V Duke of Westminster 1936 (H. of Lords)
• Payments to domestic employees by deed of covenant that amounted to remuneration
• House of Lords refused to disregard the character of the deeds merely because the same result could be brought about in another manner
• Principle applies to any form of direct taxation
The Right to Minimise Tax Liability

• Lord Tomlin “Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of the Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.”

• Lord Atkin “It has to be recognised that the subject whether poor and humble or wealthy and noble has the legal right to dispose of his capital and income as to attract upon himself the least amount of tax”

• BUT this case only involved a single avoidance step
The Right to Minimise Tax Liability

- The Ramsay Principle
- W.T. Ramsay Ltd v Inland Revenue Commissioners 1982 (H. of Lords)
- Company made a large capital gain and entered into a series of self cancelling transactions to generate an artificial capital loss and avoid CGT
- Where a transaction has pre-arranged artificial steps which serve no commercial purpose other than to save tax, then the proper approach is to tax the effect of the transaction as a whole – referred to as the Ramsay Principle
- BUT it is limited to a series of self cancelling financial steps
Empty Rate Avoidance

• Most empty rate avoidance either relies on a series of occupations for six weeks or the granting of an exemption
• The Westminster Principle establishes a right to minimise tax
• The Ramsay Principle, as extended, enables artificial financial transactions to be ignored.
• It does not refer to occupying premises
• We already have case law on rateable occupation
• What does it look like in the real world?
Potential for Investigation

- The Central list
- Missing and under valued property
- Agricultural exemption
- The internet and telecommunications
- Common areas in multiple assessments
- Fracking
  - The right to frack
  - Actual extraction
- Exercise of discretion and State Aid
Potential avoidance remedies

• Common test of each rule
• General or specific anti-abuse rules
• Modify the 6 week rule
• Charitable rate relief avoidance rule
• Insolvency rates exemption rule
• Review exemptions?
• Change the rate free period?
• Statutory definition of rateable occupation?
• All subject to the HMRC reasonableness test
What Billing Authorities are Facing A TYPICAL CASE?
The Building
Store First Limited (Appellant) and Jo Moore (Valuation Officer) (Respondant)

Heard 13ᵗʰ July 2017
Some facts

- The two proposals address the same issue of whether the appellants’ self-storage facility should be entered in the Rating List as one hereditament or 1,891 hereditaments (or less) at different material days (15 May 2013 and 12 May 2016).

- **Case Law** The following cases amongst others were cited by the parties. The most relevant to my decision are conveniently within the decisions below:
  - *Woolway (Valuation Officer) v. Mazars LLP* [2015] UKSC 53
  - *John Laing & Son Limited v. Assessment Committee for Kingswood Assessment Area and Others* [1949] 1 KB 344
The Business Model

Mr Whittaker of Store First Limited (SFL) advised me that Store First (SF) do not operate a standard storage warehouse model where a single entity controls the whole warehouse and enters into storage contracts of various lengths directly with end users. He told me it was set up to allow individuals and companies to purchase individual units (pods) within the warehouse for investment purposes. The model works (and I believe there are at least six other facilities which all follow the same process) in the following way:

- SF acquire or build a large warehouse which is then fitted out as self-storage units and common parts;
- The individual units are sold by granting long leases for a premium to investors (individuals or companies known as unit owners or investors) for a term of 249 years and 11 months (in the case of the appeal property), this is significant as part of the arrangement unlike the short term rental model means that the leaseholder of a unit has overriding rights to exclude;
  - On the granting of the long leases all of the unit owners are offered an option to lease their pods back for a period of six years with break options at years two and four. In respect of the appeal property, 517 pods were purchased by Berkley Berk through a sales agent with strict instructions never to be let out and therefore no lease back agreement was put in place;
  - In all cases where a long lease was granted, SF exercised the break clause after two years. At the end of this period Store First gave each unit owner an opportunity to allow Pay Store Limited (an associate company of SF) to manage and promote the letting of the individual pods. In order for this to occur the unit owner should sign a landlord letting management agreement (LLMA). Pay Store retain a proportion of any letting fee received from the end user. The incentive to the unit owner is that if they sign up to this there are no service charges or ground rents payable when the pods are not occupied.
The Decision

• Decision from Gary Garland the President

• My interim decision is that the appeal is allowed.

• The hereditament in the rating list is to be split into a number of hereditaments and values which will, if possible, be agreed between the parties, as well as the effective dates. If they are unable to agree this within two months the matter will be listed for a further hearing unless an appeal is made to the Upper Tribunal.

• Following confirmation from the parties on 21 December 2017 I have, at the end of this decision, made an Order in accordance with the parties wishes.
Where is this heading?

- This decision is a disgrace
- I can’t write more because I most likely will be sued

BUT

- Who knows !!!
Looking Ahead

• Into a period of uncertainty
  – New legislation
  – Revaluation
  – 75% retention
  – Devolution
  – Economic turbulence
  – Brexit

• The only certainty
  – The Non Domestic Rate really matters