

## **EXECUTIVE NOTE**

### **THE NON DOMESTIC RATING (UNOCCUPIED PROPERTY) (SCOTLAND) AMENDMENT ORDER 2008 SSI/2008/83**

The above instrument is made in exercise of the powers conferred by section 24(2) and 24A(4) of the Local Government (Scotland) Act 1966(a) and by all other enabling powers. The instrument is subject to the negative resolution procedure.

#### **Purpose**

This Instrument provides that properties, empty continuously for a period of more than three months, and owned or leased by companies in administration, or Limited Liability Partnerships in administration, will be exempt from business rates. This means that such empty properties will be treated in the same way as properties owned or leased by companies in liquidation or individuals who are bankrupt. This Instrument will, in broad terms, ensure harmonisation of rating treatment of such properties owned or leased by such companies across the whole of Great Britain.

#### **Background**

The provisions contained in this Instrument were originally proposed, and subsequently agreed to, by the UK Insolvency Service (an Executive Agency of the Department of Business, Enterprise and Regulatory Reform whose remit covers reserved aspects of insolvency policy in Scotland). The UK Insolvency Service had already obtained approval from the Department for Communities and Local Government for a similar amendment to be made to the regulations covering non-domestic properties owned or leased by companies in administration in England and Wales.

A recent High Court ruling in England (not binding in Scotland) had ruled that non-domestic rates would become payable as an expense within administration proceedings. As a result, non-domestic rates debt is elevated in the order of priority of payment of general creditors, and above certain other expenses of an administration. This could have a detrimental impact on the operation of the administration process, which over recent years has done much to promote a “rescue culture” within the insolvency profession, with a view to saving businesses in financial difficulty, and preserving employment and economic value wherever possible.

Whilst this judgement is not strictly binding on non-domestic rates legislation in Scotland, the provisions in this Instrument will provide clarity and certainty of similar rating treatment for such companies with properties in Scotland. The measure also accords with the Scottish Government’s strategic objective of creating a wealthier and fairer Scotland.

#### **Consultation**

We consulted 54 stakeholder organisations, including local authorities and business organisations on the provisions contained in this instrument during a seven week period from 18 December 2007 to 8 February 2008 inclusive and received 7 responses. Of these, only 2 substantive responses were received (the Institute of Chartered Accountants in Scotland (ICAS) and the Association of Business Recovery Professionals) suggesting amendments of a

mainly technical nature. These technical changes were taken on board and subsequently incorporated into the revised Instrument. All respondents fully supported the policy of treating insolvent companies in administration in the same way, for rating purposes, as those in liquidation and individuals who are bankrupt.

### **Financial Effects**

The cost of providing this rating exemption is likely to be negligible. Measures to promote a successful administration process should have a positive effect on the local economy, since it will assist in helping companies avoid being placed into liquidation and their employees being made redundant, even where there is an underlying business that might otherwise have been capable of being saved.

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