



Department for  
Communities and  
Local Government

## Business rates in multi-occupied properties

Consultation on reinstating the practice of the Valuation Office Agency prior to the decision of the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53



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# Scope of the consultation

Topic of this consultation:	In the 2017 Autumn Budget the Chancellor announced that the government will legislate to reinstate the relevant elements of the Valuation Office Agency's practice prior to the decision of the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53. This consultation document describes and seeks views upon how the Government proposes to deliver upon this commitment.
Scope of this consultation:	The scope of the consultation is set out below.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	As this measure amends a local taxation regime, no impact assessment has been prepared.

## Basic Information

To:	This consultation is aimed at business ratepayers and local government.
Body/bodies responsible for the consultation:	The Secretary of State for Communities and Local Government
Duration:	This consultation will last for 8 weeks to 23 February 2018
Enquiries:	For any enquiries about the consultation please contact: <a href="mailto:ndr@communities.gsi.gov.uk">ndr@communities.gsi.gov.uk</a>
How to respond:	<p>You can email your response to the questions in this consultation to: <a href="mailto:ndr@communities.gsi.gov.uk">ndr@communities.gsi.gov.uk</a></p> <p>If you are responding in writing, please make it clear which questions you are responding to.</p> <p style="text-align: center;">“multi-occupied properties consultation response”.</p> <p>Written responses should be sent to:</p> <p style="text-align: center;">Local Taxation Division, Fry Block South East Corner 2nd Floor 2 Marsham Street London SW1P 4DF</p>

# Introduction

1. For over 50 years businesses who occupied more than one unit of property in a building shared with other businesses were assessed for business rates based on a simple rule. Where their units of property were contiguous (touching) then they received one rates bill. Where their units of property were separated by another business or an area in shared use then they received a rates bill for each unit of property.
2. This meant that where a business occupied two adjoining floors of a building or two rooms separated by a wall only, then they received one rates bill. Where the business occupied two floors separated by another floor used by another business or they occupied two rooms on either side of a common corridor then they received two rate bills.
3. This rule was widely understood and accepted by ratepayers, their representatives and the Valuation Office Agency (who are responsible for assessing business rates). However, in 2015 the judgement of the Supreme Court in *Woolway (VO) v Mazars* [2015] UKSC 53, cast doubt upon this and as a result the Valuation Office Agency has had to change its practice. The practice of the Valuation Office Agency is now that separate units of property in a shared building should be treated as separate rating units and therefore receive their own rates bill irrespective of whether they are in the same occupation and are contiguous. As a result many ratepayers who were previously receiving only one rates bill are now receiving two or more. In some cases they have had to pay more in business rates as a result of this change.
4. In the 2017 Autumn Budget the Chancellor announced that the government will legislate to reinstate the relevant elements of the Valuation Office Agency's practice prior to the Supreme Court decision. This consultation document describes and seeks views upon how the government proposes to deliver this commitment.

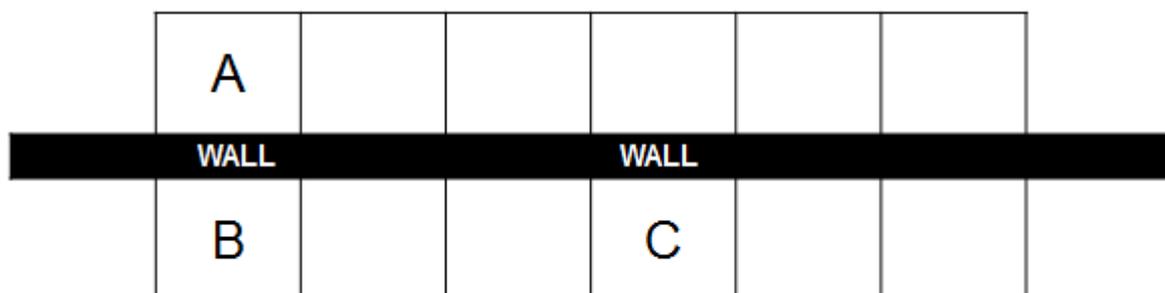
## The position prior to the Supreme Court decision in *Woolway (VO) v Mazars* [2015] UKSC 53 “the Mazars decision”

5. Prior to the Mazars decision, the Court of Appeal judgement in *Gilbert (VO) v S Hickinbottom & Sons Ltd* [1956] 2 Q.B. 40 was regarded as the leading decision on the identification of the unit of assessment for business rates (known as “the hereditament”). When considering the question of what a separate hereditament is for rating purposes, Denning LJ said that (absent a definition in the statute) the following general rules applied:

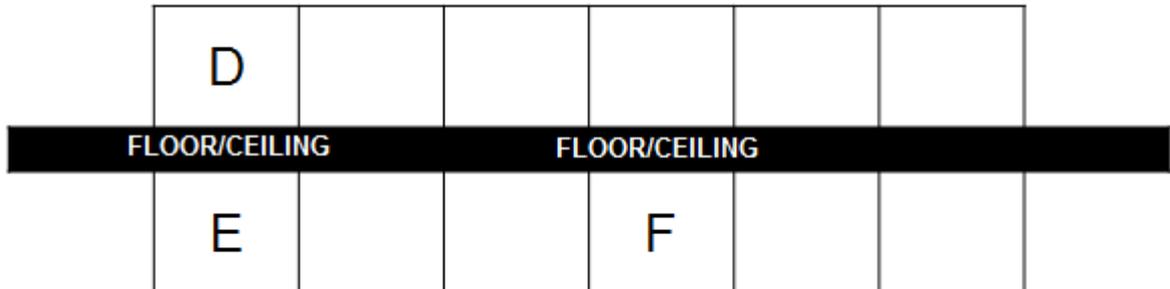
(1) *“First take the case where two or more properties are within the same curtilage or contiguous to one another, and are in the same occupation. In that case they are, as a general rule, to be treated for rating purposes as if they formed parts of a single hereditament. There are, however, exceptional cases where for some special reason they may be treated as two or more hereditaments. That may happen for instance, [...] because one part is used for an entirely different purpose (see North Eastern Railway Co v Guardian of York Union).”*

(2) *“Secondly, take the case where the two properties are in the same occupation but are not within the same curtilage nor contiguous to one another. In that case each of the properties must as a general rule be treated as a separate hereditament for rating purposes: and this is the case even though they are used by the occupier for the purposes of his one whole business. That was the position in the first four of the Five Rating Cases considered in 1931 (Spillers’s case etc.). The two properties of the occupier were separated by the property of someone else, such as a dwelling house, a canal or a railway. No one doubted that they should be treated as two separate hereditaments unless they could be said to be "contiguous" to one another, which the court held not to be the case.”*

6. Following the general rules set out in this case, it has been the practice of the Valuation Office Agency to treat contiguous properties as a single hereditament when occupied by the same person. The Valuation Office Agency’s approach to the meaning of contiguous was to treat two units of property as being contiguous where they were separated by a wall or floor/ceiling. For example, a floor/ceiling between two otherwise contiguous offices may contain services in a void occupied by the landlord but such space in walls and floors/ceilings were not considered by the Valuation Office Agency to prevent the units of property being contiguous.
7. Taking the example below, rooms A, B and C are on the same floor, in the same occupation and connected by a common corridor (not shown). Rooms B and C are separated by other rooms in different occupation. The Valuation Office Agency would have considered rooms A and B to be contiguous and form one hereditament but not room C which would form a separate hereditament.



8. And in the example below, room D is on the floor above rooms E and F, in the same occupation and connected by common corridors and stairs (not shown). The Valuation Office Agency would have considered rooms D and E to be contiguous and form one hereditament but not room F which would form a separate hereditament.



9. There were some exceptions to the general rules:
- a. two contiguous properties in the same occupation would still be treated as separate hereditaments where the two parts were used for wholly different purposes. An example might be where one part was capable of separate letting and was not in use, and
  - b. two non-contiguous properties separated by a public highway or common area (such as a common corridor) would still be assessed as a single hereditament where a sufficiently strong functional connection could be shown to exist between the two parts. An example would be 2 parts of a golf course separated by a road.
10. These general rules, and associated exceptions, were widely accepted and adopted in business rates.

## The Mazars case

11. In the Mazars case, the Supreme Court found that the primary test in determining what is a hereditament should concern the geographical nature of the property and whether those properties would form a single unit on a plan. Lord Neuberger at [47] said:

*“Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament.”*

12. This was not a position which was being argued by either the Valuation Office Agency or the ratepayer in the Mazars case<sup>1</sup>. As a result of the decision, the Valuation Office Agency has had to change its approach<sup>2</sup>. The general rule now is that two contiguous properties in the same occupation are only assessed as one if they can be considered a self-contained piece of property. Typically this will apply if both parts are physically accessible without having to go onto other property or through commons parts (such as a common corridor or stairwell).
13. In the examples given above, properties A and B and D and E would all now be separate rating assessments with their own rates bills. But if the ratepayer created a door through the wall between property A and B then they would again be one hereditament.
14. Properties which would otherwise form a single hereditament may still be separately assessed when used for wholly different purposes. And two separate properties may still be assessed as one if there is a sufficiently strong functional connection between them<sup>3</sup>.

## The Impact of the Mazars decision

15. The change in Valuation Office Agency practice following the Mazars decision has had the following impacts for some ratepayers.

### **Increases to the overall rateable value due to the loss of “quantum discount”**

16. In rating valuation, larger properties may attract a lower value for each square metre of space than similar smaller properties. This reflects the practice in the market under which landlords will agree a discount to tenants who take more space. This is known as a “quantum discount”.
17. Some of the properties previously assessed as one hereditament before the Mazars decision would have benefitted from this quantum discount. If those properties are separately assessed by the Valuation Office Agency as a result of the Mazars decision then the quantum discount may be reduced or lost. As a result the overall rateable value for the properties concerned will increase and the ratepayer may face a higher rates bills. However, it is not possible to say with certainty how much rateable values have changed due to the Mazars decision and how much from other factors.

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<sup>1</sup> The ratepayer did not take part in the Supreme Court proceedings – instead the Court appointed an Advocate of the Court.

<sup>2</sup> [The VOA Rating Manual - Volume 4 - Section 2: Occupation and the Hereditament.](#)

<sup>3</sup> The VOA’s practice in relation to the functional test is explained in section 2.4 of [Volume 4 of the VOA Rating Manual](#)

## Small Business Rate Relief

18. Since 1 April 2017, ratepayers are only eligible for Small Business Rate Relief if they occupy one property with a rateable value not exceeding £15,000 (although occupation of additional properties with a rateable value below £2,900 is disregarded up to a maximum overall rateable value of £20,000 or £28,000 in London)<sup>4</sup>.
19. Some ratepayers who were eligible for Small Business Rate Relief but have seen their property split into parts as a result of the Mazars decision may have lost the relief because they now have two or more hereditaments. We do not hold centrally information about which ratepayers receive Small Business Rate Relief but we estimate that fewer than 1,000 ratepayers have been affected by the loss of small business rate relief as a result of the Mazars decision.
20. Exceptionally, some ratepayers who were previously not eligible for Small Business Rate Relief because their rateable value was above £15,000 may have become eligible on their main property following the split of their hereditament due to the Mazars decision. We estimate the number of ratepayers affected in this way is very small – perhaps about 100.

## Changes to rateable value due to rounding

21. The Valuation Office Agency operates a rounding policy under which different rateable values are rounded to different levels<sup>5</sup>. As a result of this rounding policy, the total rateable value of two or more hereditaments after they have been split following the Mazars decision may change. The impact of rounding cannot be isolated from the effect of other changes to the rateable value but the impact of rounding is unlikely to exceed plus or minus 1%.

# Reinstating the practice of the Valuation Office Agency prior to the Mazars decision

22. The previous practice of the Valuation Office Agency was widely accepted and understood and provided for a stable and fair approach to business rates. The Valuation Office Agency had not argued during the Mazars case that their practice should change. And after the decision and subsequent change in Valuation Office Agency practice, the professional bodies working in business rates called for the previous practice to be reinstated. Therefore, in the 2017 Autumn Budget the Chancellor announced that the government will legislate to

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<sup>4</sup> [The Non-Domestic Rating \(Reliefs, Thresholds and Amendment\) \(England\) Order 2017 \(S.I. 2017/102\)](#)

Prior to 1 April 2017, 100% small business rate relief was available up to £6,000 rateable value and tapered relief of between 100% and 0% between £6,000 and £12,000 rateable value.

<sup>5</sup> <http://app.voa.gov.uk/corporate/publications/Manuals/RatingManual/RatingManualVolume4/sect12/a-rat-man-vol4-s12.html>

reinstate the relevant elements of the Valuation Office Agency's practice prior to the Supreme Court decision. This is the practice described at paragraphs 5 to 10 above.

23. The scope of this consultation does not extend to whether the government should make this legislative change nor whether the relevant elements of the Valuation Office Agency's practice prior to the Mazars decision should or should not be reinstated. The scope of the consultation extends to:
  - a. how in legislation we should capture this policy intention, and
  - b. how this policy intention should then be implemented.
24. In order to meet this commitment the government intends to legislate<sup>6</sup> so that in prescribed circumstances two or more hereditaments occupied by the same person shall be treated as a single hereditament. A draft Bill is attached at Annex A. Clause 1 of the draft Bill would insert paragraphs (3ZA), (3ZB) and (3ZC) into section 64 of the Local Government Finance Act 1988.
25. Paragraph (3ZA) provides that where two or more hereditaments are occupied by the same person and meet the contiguity condition then they shall be treated as one hereditament.
26. Paragraph (3ZB) sets out the contiguity condition. Hereditaments meet the condition where they are contiguous with one another and where there is a chain of contiguity. In the draft Bill, paragraph (3ZC) provides that two hereditaments are contiguous if:
  - (a) some or all of a wall of one hereditament forms all or part of a wall of the other hereditament, or
  - (b) some or all of the floor of one hereditament forms all or part of the ceiling of the other hereditament
27. Taking the example shown at paragraph 7 above, the draft provisions are intended to provide that the wall of hereditament A forms all or part of the wall of hereditament B resulting in these being contiguous. But the wall of hereditament A does not form part of the wall of hereditament C and, therefore, A and C are not contiguous (even though each wall forms part of a larger internal wall).
28. Equally, in the example shown at paragraph 8 above, the draft provisions are intended to provide that the floor of hereditament D forms all or part of the ceiling of hereditament E resulting in these being contiguous. But the floor of hereditament D does not form part of the ceiling of hereditament F and, therefore, D and F are not contiguous (even though each floor or ceiling forms part of a larger floor plate).

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<sup>6</sup> By introducing primary legislation that will amend the Local Government Finance Act 1988

29. To the extent that the wall between A and B and the floor and ceiling between D and E may contain ducts or voids for services in the occupation of the landlord of the building, the draft provisions are not intended to prevent either A and B or D and E being contiguous. If such a void was present, the structure between A and B would, under the draft provisions, still be a single wall and, therefore, would meet the test in 3ZC(a). Equally, if such a void existed between the floor and ceiling D and E in our example, then 3ZC(b) would still be satisfied because some part of the floor of D would, nevertheless, still form part of the ceiling of E.
30. Sub-paragraph 3ZA(c) provides that hereditaments used for wholly different purposes are not included in the provisions of the Bill. Practice both before and after the Mazars decision is that two or more units of property used for wholly different purposes should be separate hereditaments (see paragraphs 9 and 14 above). Therefore, the legislation will exclude hereditaments used for wholly different purposes.
31. Also, the draft provisions are not intended to disturb established case law under which two non-contiguous properties separated by a public highway or common area (such as a common corridor) would still be assessed as a single hereditament where a sufficiently strong functional connection could be shown to exist between the two parts (see paragraphs 9 and 14 above). Finally, unoccupied hereditaments are outside of the provisions of the draft Bill.
32. The Supreme Court decision was made in 2015 and the Valuation Office Agency has since been making alterations to the rating lists. Between the date of the decision and 1 April 2016 the Valuation Office Agency were required to backdate changes to, if appropriate, 1 April 2010. Since 1 April 2016, the Valuation Office Agency have been required to backdate alterations to 1 April 2015 and from 1 April 2018 they will be limited to 1 April 2017. Therefore, some alterations made as a result of the Mazars decision may have been backdated to 1 April 2010. To allow the Valuation Office Agency to reapply its previous practice to affected properties, the change in legislation will be retrospective to 1 April 2010 (see clause 2(2) of the draft Bill).

**Question 1: Does the draft Bill at Annex A put in practice the policy intention as set out above to reinstate the practice of the Valuation Office Agency prior to the Mazars decision?**

**Question 2: if your answer to question 1 is no, why and how should the draft Bill be amended to reinstate the practice of the Valuation Office Agency?**

## Implementation

33. Once the Bill receives Royal Assent and the appropriate secondary legislation is in force, ratepayers will be able to approach the Valuation Office Agency to have the provisions applied. Once the Valuation Office Agency has amended the relevant rating lists, bills will be automatically recalculated by local authorities.

### **The 2010 rating list (from 1 April 2010 to 31 March 2017)**

34. As discussed at paragraph 32 above, some ratepayers may have seen the impact of the Mazars decision backdated to their property as far as 1 April 2010. However, the Valuation Office Agency cannot now, in the absence of a proposal from a ratepayer, amend the 2010 rating list to before 1 April 2015. And from April 2018, the 2010 rating list will be closed to the Valuation Office Agency other than for proposals already submitted.
35. The government wants to ensure that those ratepayers who have been affected by the Mazars decision in the 2010 rating list have the opportunity to request a reassessed rateable value on the basis of the reinstated previous practice of the Valuation Office Agency. Therefore, once the Bill receives Royal Assent, the government will provide a right to make a proposal to amend the 2010 rating list.
36. This right will be limited to those affected by the Mazars decision who believe that two or more hereditaments in the 2010 rating list ought to be merged to form one hereditament as a result of provisions in the draft Bill. The government will ensure that the former 2010 list proposals and appeals process will apply.
37. Ratepayers (or previous ratepayers) will then be able to discuss with the Valuation Office Agency the implications of a backdated change to the 2010 rating list and only proceed if they wish. This will ensure that the previous Valuation Office Agency practice is only applied to the 2010 list where the outcome is desired by the ratepayer.

**Question 3: Do you agree that backdated changes to the 2010 rating list to reinstate the previous practice of the Valuation Office Agency should only be made as a result of a proposal from the ratepayer (or a previous ratepayer)?**

**Question 4: Do you agree that the former 2010 list appeals process should apply to proposals for backdated alterations to the 2010 rating list?**

**Question 5: If your answers to questions 3 or 4 are no, why and what arrangements should apply for implementation of this policy to the 2010 rating list?**

### **The 2017 rating list (from 1 April 2017)**

38. The Valuation Office Agency have a duty to maintain the current 2017 rating list and, subject to some limitations<sup>7</sup>, have to maintain the rating list retrospectively back to 1 April 2017 as necessary. Once the Bill receives Royal Assent, the

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<sup>7</sup> the Valuation Office Agency cannot, other than due to an error or default on the part of the ratepayer, retrospectively increase a rateable value from 1 April 2017 or from the date they previously amended the rating list. But these limits do not apply to rating assessments being split or merged and, therefore, are unlikely to apply to alterations reinstating the previous practice of the Valuation Office Agency. Regulation 14(7) of Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268)

Valuation Office Agency will maintain the 2017 rating list to reflect the reinstatement of their practice prior to the Mazars decision. This will, therefore, be business as usual and is not within the scope of this consultation.

39. Ratepayers affected on the 2017 list who believe that the reinstated practice should apply to them, will be able to submit “checks” in relation to the affected assessments. The Valuation Office Agency will prioritise dealing with these checks to apply the effect of the legislation to the 2017 list. This will ensure that ratepayers will also have the opportunity to ask the Valuation Office to amend their assessment quickly in the 2017 list where they believe it is now inaccurate due to the coming into force of the draft Bill.

**Question 6: Do you agree that a ratepayer should be able to make a prioritised “check” of their rateable value on the 2017 rating list to apply the legislation to their assessment? This would be in addition to the Valuation Office Agency’s normal duty to maintain the rating list.**

**Question 7: If your answer to question 6 is no, why and what arrangements should apply to reinstate the practice prior to the Mazars decision?**

### **The local government business rates retention scheme**

40. For local government, any additional business rates revenue arising from the Supreme Court decision which they would have held under the rates retention scheme will be offset by the reinstatement of the previous practice of the Valuation Office Agency. The overall impact on rates income will, therefore be nil and no compensation will be payable under the rates retention scheme.

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).