

TOP STOREY

Welcome

Welcome to **Top Storey**, our commercial property update. We aim to keep you informed of developments relevant to you and your business. Feel free to suggest topics for future issues.

For further information on our property department and the services we offer, or if you have any comments on this publication, email bob.smyth@burgess-salmon.com

To receive your own regular copy of **Top Storey**, or to have it sent to a colleague, or if you would prefer to receive it by email, contact marketing@burgess-salmon.com or subscribe via our website.

Back issues are available on our website.

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Hold tight in 2007

Burgess Salmon Senior Partner, Bob Smyth, looks ahead...

Welcome to the first issue of **Top Storey** in 2007. You will find no predictions on the future of the property market in these pages. You can take your pick of those from the property and business press, who tell us that it will be either steady as she goes or a grisly mess. The key to holding our nerve at this time is for us to be prepared for either outcome - and at Burgess Salmon we hope we are. We are tracking the increasing segmentation and specialisation of the property market and working hard to ensure that we have the skills and resources to match emerging requirements. Some of those skills are not traditionally associated with mainstream property, and we have to be increasingly flexible in how we work.

We will be at MIPIM again in March - and our team sheet accompanies this issue. As international transactions involving real estate are an increasing feature of our work, we will be meeting members of our international "better friends" legal network in Cannes to discuss ways in which we might offer added value to clients for whom this is of interest. Our better friends are all quality independent commercial law firms with good reputations and service standards and are people we know and can work with. If this has interest for you, contact me (bob.smyth@burgess-salmon.com) or Rick Read (richard.read@burgess-salmon.com).

You may know that we are now working on our future move to new premises at Temple Quay Central. There will be more news about this in later issues of **Top Storey**. We are using the experience to learn about being a client - which is a very interesting position for us to be in and which we hope will improve our understanding of the pressures and constraints under which our own clients - and your clients - operate.



"Our better friends are all quality independent commercial law firms with good reputations and service standards and are people we know and can work with."

We are also relocating our London office to a new location in Chancery Lane. We are taking more space, which will be ready for us in the spring, and will be improving the facilities available there.

For further information contact bob.smyth@burgess-salmon.com or tel: 0117 939 2224

MIPIM 2007

With this edition of **Top Storey** we are enclosing details of the team from Burgess Salmon that will be attending MIPIM in March. If you are going to MIPIM, why not get in touch with one of the team and perhaps meet up for a chat and a cold beer at the IKB Beer club (*see insert for details*).

Visit our website at www.burgess-salmon.com

Stamp Duty Land Tax avoidance - the net tightens

Regulations were introduced on 6 December 2006, designed to defeat the structuring of certain property transactions in such a way as to avoid SDLT.

The regulations are wide ranging and are likely to defeat many of the SDLT planning schemes circulating since the introduction of SDLT in 2003, notably break clause and sub-sale schemes and also partnership schemes.

The regulations can broadly be divided into two categories:

- Regulations in the first category affect the break clause/sub-sale type schemes by effectively introducing a statutory “ignore pre-ordained intermediate steps” type provision. If a purchaser acquires land from a vendor, and if there are transactions involved with that disposal/acquisition (known as “scheme transactions”) as a result of which the SDLT which is paid is less than would have been the case had there been no such scheme transactions, they are disregarded, and a “notional” land transaction between the vendor and the purchaser is deemed to have taken place.

The wording is ambiguous, but it is probably broad enough to cover the break clause and sub-sale type of

schemes. Indeed sub-sales, breaks and failures to exercise rights are specifically identified as “scheme transactions”.

- The second category of anti-avoidance regulations affects partnerships. It has always been the case that if property has been introduced into a partnership, and the introducing partner (or someone connected with that partner) retained 100% of the beneficial interest (through the right to receive income) there was no charge to SDLT on the introduction.

This applied where the connected party was either an individual or a company, with the result that it was possible to introduce property into a partnership, with the partnership paying actual consideration, but without paying any SDLT on that consideration.

A provision now prevents companies being connected parties for these purposes, so it is only if an individual introduces a property into a partnership, and he is connected with another individual, that SDLT saving can arise.

For further information on the issues raised in this article please contact michael.clarke@burgessalmon.com

“The regulations are wide ranging and are likely to defeat many of the SDLT planning schemes circulating since the introduction of SDLT in 2003...”

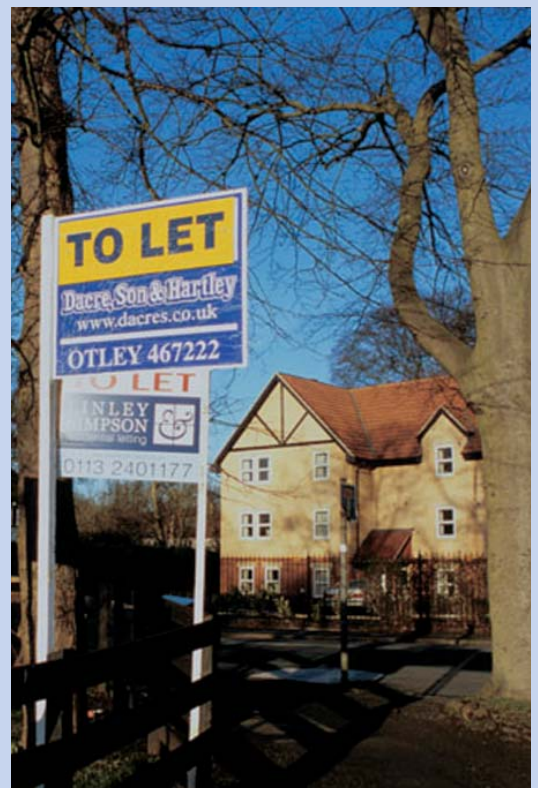
Empty dwellings - use them or lose them

The ranks of residential property landlords have expanded greatly in recent years. Apart from the investment risk of voids, landlords now face the power of local authorities to take over the management of long-empty residences and install occupiers under an Empty Dwelling Management Order (EDMO) to supplement its housing provision.

EDMOs are an option for local authorities where property has been wholly unoccupied for at least 6 months with no reasonable prospect of becoming occupied in the near future but a reasonable prospect that it will become occupied if an EDMO is made. Initially, they last 12 months, with the possibility of extension for seven years.

Statutory exceptions prevent an EDMO where, for example, the property is the owner’s home and is temporarily unoccupied through ill health, it is genuinely on the market for sale or letting; or a lender has taken possession under a mortgage.

The Authority must notify the owner and relevant third parties in advance of making an application, so in many cases a promptly and well-advised landlord or lender may be able to avoid an order. In any event, there is provision for compensation for third parties



and surplus rent must be paid to the owner, but this will not match a commercial rent, so this is a risk of which landlords large and small should be aware.

For further information on the issues raised in this article please contact jennifer.alexander@burgessalmon.com

In like a lamb - Reits arrive quietly

Unlike the weather, Reits arrived quietly at the start of the year. On 1 January 2007, nine listed property companies converted to Reit status, including British Land, Land Securities, Hammerson, Brixton and Slough Estates.

They can now look forward to sunny days of income free of corporation tax and capital gains free of CGT - in exchange for an initial black cloud of the one-off payment to the Chancellor equivalent to 2% of their assets.

So what's forecast for Reits in 2007?

1. The prevailing wind of opinion is for further conversions of other property PLCs, including Big Yellow, Shaftesbury, Unite and Workspace. Each of these companies are working hard to satisfy the Reit conversion criteria.
2. We may see some new Reit companies entering the public sector, though these will need to be structured carefully to ensure they meet the strict Reit shareholding criteria (no shareholder can own more than 10% of the shares in a Reit).
3. The early part of the year might see an increase in transactional activity as new Reits, freed from the

shackles of CGT, sell off the properties with high potential CGT liabilities they were holding onto prior to conversion.

There could also be a bit of a chill in air. A number of public companies may be taken private or be potential takeover targets, either because their stock is no longer as attractive to investors as Reit companies, or because the major investors in those companies do not want, or the company is unable, to convert to Reit status.

After all the fanfare and speculation of 2006, it will be interesting to see if the forecast success of the UK Reit market in 2007 is correct.

If you require any more information on Reits, their tax treatment, the qualifying criteria for a Reit or any other information regarding Reits please contact any of the following:

For further information on this article (and regular weather reports) please contact:

**richard.read@burges-salmon.com
nigel.popplewell@burges-salmon.com; or
chris.godfrey@burges-salmon.com**

HP Sauce...

...may not be manufactured in the UK for very much longer, but the Parliamentary production line grinds on. Recent, forthcoming and threatened statutory changes relevant to property owners, occupiers and developers include:

■ Fraud Act 2006

This came into force on 15 January 2007 introducing a new general offence of fraud. As a result, dishonestly failing to disclose information, or dishonestly making a false representation in replying to pre-contract enquiries may amount to a criminal offence - as well as possibly enabling the buyer to rescind the contract. Answering these questions may be dull, but this makes it even more important to take them seriously.

■ New CDM Regulations and Construction Industry Scheme

The Construction (Design and Management) Regulations 2007 are expected to take effect from the 6 April 2007 and will consolidate the responsibilities of developers, contractors and designers for health and safety in construction works. In addition, the construction industry will have to get to grips with the Revenue's revised Construction Industry Scheme, a tax deduction scheme designed by the Revenue to deal with problems, which were endemic in the industry, of engaging workers on a "cash in hand" basis, coupled with (from the Revenue's perspective) a poor record of complying with tax obligations. This is also expected to take effect from April.

■ Smokeless Zones

From 1 July 2007 it will be a criminal offence to smoke in

a "smoke free place" in England. This means premises with a ceiling or roof (including a canvas awning) and where any openings in the walls amount to less than half their total area. Managers of smoke free premises risk a fine if they fail to put up "no smoking" signs or permit anyone to smoke on the premises. At the time of writing the Welsh Assembly has not yet made equivalent regulations in Wales - so it may be possible that what amounts to smoke free premises in England and Wales will differ.

■ Planning Gain Supplement

A Bill introduced just before Christmas gives the Revenue and other relevant Government departments power to prepare for the introduction of "a tax on the increase in the value of land resulting from the grant of permission for development". However, any new tax is not expected to be introduced, if at all, before 2009.

■ And finally...

Spare a thought for our hard pressed colleagues in the Burges Salmon Corporate Department.

The Companies Act received Royal Assent before Christmas and is the largest statute the UK Parliament has ever enacted. It represents a comprehensive overhaul of company law in England & Wales. If our company lawyers seem a bit distracted at present, its because they are still trying to work out what it all means!

For further information on the issues raised in this article or to receive briefings on the Companies Act please contact rose-anna.higgins@burges-salmon.com



"The Companies Act received Royal Assent before Christmas and is the largest statute the UK Parliament has ever enacted. It represents a comprehensive overhaul of company law in England & Wales..."

...and Bolognese Sauce?

With the Italian Finance Act 2007, which has effect from 1 January, Italy has changed its tax legislation in relation to trusts in general, and more particularly trusts holding real estate. This amendment makes important changes to the taxation of off shore trusts created by Italian resident settlors and/or with Italian beneficiaries. From 1 January 2007 any such trusts with trustees resident in Italian 'black-listed' countries will be deemed resident in Italy and therefore taxable there. Black-listed countries include the usual tax havens such as the Channel Islands, Switzerland, the



Caymans, the Bahamas and the British Virgin Islands. Also, if an Italian resident person transfers real estate to an off shore trust, that trust is deemed resident in Italy for tax purposes. This is the last in a series of extensive changes since the summer to the Italian tax legislation relating to real estate holding vehicles and transfer taxes.

For further information on the issues raised in this article please contact beatrice.puoti-ffiske@burgessalmon.com

Service Charges in Commercial Property - RICS Code of Practice



Whilst a lease reflects the commercial bargain between landlord and tenant, service charges have, historically, quite often given rise to uncertainty, disquiet and, in some cases, confrontation. Despite previous industry-wide practice notes, Commercial Service Charges have remained unregulated. The RICS has now sought to address this by the introduction of a new code which comes into effect on 1 April of this year.

The new Code carries the status of a guidance note. The RICS states that a Code with guidance note status "provides RICS members with advice on aspects of the

profession and procedures that embody best practice and meet a high standard of professional competence". Whilst the Code, therefore, is not law and does not override existing lease provisions, it does provide the property industry with a clear set of recommendations which, if implemented, should benefit all parties.

The Code covers a range of key issues including management, communication, transparency, service standards and administration. It highlights an owner's obligation to manage property through best practice and the establishment of management policies which are reflective of those practices. It emphasises the concept that Service Charges should be "not for profit, not for loss" and that such services should provide "value for money and effective service".

Landlords and tenants are encouraged to immediately abide by The Code provisions and to embody those provisions within new leases when either renewing current leases or agreeing new ones. The Code also encourages any Service Charge dispute to be addressed through alternative dispute resolution and to utilise the Dispute Resolution Service of the RICS.

Initial response to the publication of The Code has included some criticism over its legal status and the ability for proper measurement to be undertaken to assess compliance. However, what The Code certainly does provide is a further incentive for the property industry - assuming commitment from both landlords and tenants, as well as from their advisers - to address this area. Failure to embrace this new initiative may result in commercial service charges following residential service charges with enforced regulation by statutory intervention.

Narrow Quay House
Narrow Quay
Bristol BS1 4AH
tel: 0117 939 2000
fax: 0117 902 4400

Holbrook House
14 Great Queen Street
London WC2B 5DG
tel: 020 7405 4343
fax: 020 7405 6788

www.burgessalmon.com

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A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.

Don't forget to visit our website at www.burgessalmon.com

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