

### COVID-19 and mitigating your liability

#### **Background**

The Chancellor has announced improved business rate reliefs for businesses struggling in the light of the COVID-19 pandemic. The changes to date are focussed on the retail, leisure and hospitality sector plus certain day nurseries, and premises in other sectors qualifying for small business rate relief or rural rate relief.

In addition, the Government is bringing in new grants for some businesses, eligibility for which will be linked to the rating list entries for the premises they occupy.

Those businesses that do not qualify for the new grants and reliefs will still be looking at ways to mitigate their liability and seeking advice on the other opportunities within the business rates system to reduce bills.

#### **Changes to the retail relief scheme (now including leisure hospitality and nurseries)**

Over a busy few days since 11 March the Chancellor of the Exchequer has announced changes to business rate relief for retail premises and expanded the scope of relief to include the leisure, hospitality and nursery sectors, regardless of the rateable value of the premises.

The effect of these measures is that occupiers of qualifying premises will pay no rates at all for the 2020/21 rate year. This is clearly good news for those sectors, but it is important to be aware of the detail of the schemes and any premises that may be excluded.

So far there has been no announcement of additional relief for larger businesses outside the specified sectors, ignoring the impact of the pandemic on industry and commerce as a whole.

#### **Grants**

In addition to relief from rate payments for 12 months, the retail, leisure and hospitality sectors will benefit from new grants, as follows:

Occupiers of premises with rateable values less than £51,000 will receive a grant of £10,000 or £25,000 for each 'hereditament' they occupy. A hereditament is a unit which is shown as a separate entry in the rating list. Further details are given below.



#### **Eligibility – the detail**

There are some important details regarding the application of the reliefs and grants which qualify who is eligible and these are summarised below as we currently understand them.

It is important to note that the Government is working hard to provide support to companies and individuals within a very short timescale and it is unsurprising that clarification of the fine detail may only emerge later.

The business rate relief will apply to occupied retail, leisure, hospitality and nursery properties so they will pay no rates in the year 2020/21. It will not apply to premises which are vacant.

The Government has provided guidance to billing authorities regarding the operation and delivery of the policy, which is summarised below. Policy and guidelines are constantly being updated and we will endeavour to keep you informed of any changes as quickly as possible.

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#### Expanded retail relief

##### **Retail Rate Relief (RRR)**

100% relief will be provided to all occupied premises within the retail, leisure, hospitality and nursery sectors, apart from the following, irrespective of Rateable Value.

##### **Exceptions:**

- Financial services (e.g. banks, building societies, cash points, bureaux de change, short-term loan providers)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers)
- Post office sorting offices
- Premises that are not reasonably accessible to visiting members of the public

Under the expanded retail discount scheme, properties within these sectors will have zero liability for business rates in the 2020/21 rate year.

For this purpose, nursery premises are defined as those occupied by providers on Ofsted's Early Years Register and wholly or mainly used for the provision of the Early Years Foundation Stage.

This relief will not apply to premises within the above classes if they are vacant.

#### Grant funding

Further assistance will be afforded to occupiers of all premises which benefit from small business rate relief or rural rate relief, by way of a £10,000 grant. This includes those outside the retail, leisure, hospitality and nursery sectors.

Additionally, grants will be available for premises in the retail, leisure and hospitality sectors for specified categories of premises in accordance with the following guidelines.

Grant funding will only be available to properties which on 11 March 2020 (the date of the spring budget) had a rateable value of less than £51,000 and would have been eligible for retail rate relief under the scheme announced in the budget on 11 March 2020.

These are premises occupied:

- As shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
- For assembly and leisure; or
- As hotels, guest & boarding premises and self-catering accommodation.

Properties within the qualifying categories with a Rateable Value of £51,000 and above will not be eligible for grant funding.



#### ***Exceptions***

The following retail and leisure categories, some of which are now eligible for rate relief, do not qualify for grant:

- Financial services (e.g. banks, building societies, cash points, bureaux de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting offices
- Casinos and gambling clubs.

As this measure is for 2020/21 only, the Government is not changing the legislation relating to the reliefs available.

It will be for individual billing authorities to administer the reliefs under their current discretionary powers, but the relief will be underwritten by the Treasury and the government will expect it to be applied.

#### **State Aid Limits**

Whilst the UK left the EU on 31 January 2020, the Withdrawal Agreement negotiated by the Government and the EU provides that during a transition period State Aid rules will continue to apply and will be subject to control by the EU Commission as at present.

Under the Regulations any single undertaking can only receive State Aid from all sources of up to €200,000 in a single year. This has been increased by the EU to €800,000 for COVID-19 related payments.

The Government has agreed with the EU that State Aid rules will not apply to the business rate relief, so that it will be available to large stores and chains without any cap on the payments. The increased cap will still apply in the case of grants.

#### **Other possible means to mitigate rate bills**

##### ***Empty property relief***

On becoming vacant there is an exemption from business rate payments of 6 months for industrial premises and three months for other commercial property. This exemption is available when the premises are vacant and cleared. In that respect premises cannot be treated as occupied simply by virtue of plant and machinery left on the premises which will be used when the premises are next occupied.

In this context plant would have the same definition as under general tax law, and hence would include office furniture and equipment, but would not include stock in trade, raw materials, files and papers etc.

Councils are likely to argue that premises closed due to the pandemic continue to be occupied for rating purposes by virtue of the items stored there for use in the business when the crisis is over. If premises have been cleared of all items other than plant and machinery they should be treated as empty and exemption sought.

##### ***Relief for partially occupied premises***

Where part of premises is mothballed for a temporary period during trade recession and is vacant, councils have discretion to grant relief on the vacant part. Where relief is granted, the rateable value is apportioned between the vacant and occupied parts and only the occupied part is subject to rates.

This discretion is usually restricted to instances where companies are moving into or out of premises and local authorities will usually require evidence of benefit to the local community, such as creation of employment, to support granting relief. Relief is restricted to a maximum of six months for industrial premises and 3 months for other premises, but more than one application is possible if the extent of the occupied part changes.

There is nothing that would prevent an application being made for partial vacation of premises as a result of COVID-19 but local authorities are responsible for funding relief from their own resources and are unlikely to want to open the floodgates.

In some cases, it may be possible to split the rating list entry between the occupied and unoccupied premises in order to qualify for statutory relief on the vacant part. This would require application to be made to the Valuation Office Agency under the 'check, challenge, appeal' system.

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#### *Hardship relief*

Councils also have discretion to grant relief for hardship but again would expect any claim to be supported by evidence of the benefits the business brings to the local area, and the ability of the business to continue if support is given, in addition to evidence of hardship by way of trading accounts. Successful claims are rare and again councils are likely to be reluctant to open the floodgates for COVID-19 claims.

#### *Valuation appeals*

Finally, there is a right of appeal against the rateable value of your premises and successful appeals can be backdated, in appropriate circumstances to April 2017.

If you would like further information on any of the matters referred to, or on any other business rates matter, our specialist team will be very happy to assist.

#### IMPORTANT LINKS

##### Full document:

<https://www.gov.uk/government/publications/business-rates-retail-discount-guidance>

##### Additional Information:

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close>

<https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-on-business-support-grant-funding>

<https://www.gov.uk/government/publications/business-rates-nursery-childcare-discount-2020-to-2021-coronavirus-response-local-authority-guidance>

##### Aitchison Raffety Business Rates Datasheet:

<https://www.argroup.co.uk/services/business-rates/business-rates-data-england/>

##### Is the future of Business Rates 2022:

<https://www.argroup.co.uk/24-3-20-is-the-future-of-business-rates-2022/>

