

COVID-19: UK Government's Latest Measures to Support Businesses

Updated July 17, 2020

This memorandum updates the position as at July 17, 2020 in relation to the UK government's "unprecedented" economic measures to support UK businesses and mitigate the economic disruption caused by the coronavirus pandemic ("COVID-19"). Since March 2020, a number of measures have been implemented and/or announced and the official guidance has evolved. In particular, the Chancellor's 'summer economic update', delivered on July 8, 2020, included a number of measures to assist businesses and individuals¹.

As part of these measures, the UK government is making available to UK businesses an initial £330 billion of government-backed and guaranteed loans, making a material contribution to the salary and wage bills of those who are furloughed in connection with the pandemic, and financially supporting the self-employed. HM Treasury and the Bank of England (the "Bank") are also providing major financing schemes to help UK businesses bridge COVID-19 related disruption to their cash flows.

The UK government has obtained new legal powers via the Coronavirus Act 2020 (the "Act"), which received royal assent on March 25, 2020 after a rapid passage through parliament. The Act enables the UK government to offer any further financial support that is required in order to prevent, mitigate or compensate for the impact of COVID-19 on UK businesses.

This memorandum outlines the economic and fiscal measures implemented and/or proposed by the UK government and certain other developments likely to be relevant to UK businesses.

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¹ See: <https://www.gov.uk/government/speeches/a-plan-for-jobs-speech>
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I. Bank Rate cut

The Bank's Monetary Policy Committee ("MPC") voted at a special meeting on March 10, 2020 to cut the Bank's base rate of interest ("Bank Rate") by 50 basis points to 0.25%. However, by March 19, 2020, the MPC found that conditions in the UK gilt market had deteriorated, and UK and global financial conditions had generally tightened, prompting the MPC to reduce Bank Rate further to 0.1%, its lowest level ever. Since May 6, 2020, the MPC has voted unanimously to maintain Bank Rate at 0.1%.

The reduction in Bank Rate is intended to support business and consumer confidence during the COVID-19 outbreak and bolster the cash flows of businesses and households. It reduces the cost, and improves the availability, of finance – handy, given the significant funding measures included in the package of measures (and discussed below).

II. Salary and wage support for all UK employers

On March 20, 2020, the Chancellor announced the 'Coronavirus Job Retention Scheme', pursuant to which any UK employer, regardless of size and sector, can receive government funding to cover 80% of an employee's salary or wage, up to a maximum of £2,500 per month, if they are furloughed but kept on the payroll in connection with the pandemic, rather than made redundant. Employers can top up the amounts paid by the UK government, but they do not have to (although see further below regarding holiday pay).

In a series of subsequent guidance notes, and directions given on April 15, 2020, May 20, 2020 and June 25, 2020 by HM Treasury to the UK's tax authority, HM Revenue & Customs ("HMRC") pursuant to the Act (the "Treasury

Directions"²³⁴), the UK government has confirmed the following:

A. *Who can claim?*

- The scheme is available to any business, charity, recruitment agency, individual employer and public authority who established a UK 'Pay As You Earn' ("PAYE") payroll scheme on or before March 19, 2020, and has a UK bank account. There is no requirement that an organisation be incorporated in the UK.
- Whilst the scheme is intended to help employers whose operations have been severely affected by the pandemic, there is no requirement to demonstrate such impact when making a claim under the scheme, as the UK government has acknowledged that different businesses will face different impacts from COVID-19. Indeed, the Treasury Directions formally extend the scheme to any employees who are furloughed, "*by reason of circumstances arising as a result of coronavirus or coronavirus disease*".

B. *Who is an 'employee' for this purpose?*

- Provided that they were hired, were on a PAYE payroll and had been notified to HMRC via a 'Real Time Information' PAYE submission ("RTI") on or before March 19, 2020, claims can be made in respect of any employee regardless of whether they are employed on an indefinite or fixed-term contract or on a full-time, part-time or zero-hours basis.
- Claims can also be made in respect of the following, provided they are paid through PAYE: (i) office holders such as company directors (including those who are paid annually); (ii) members of limited liability partnerships ("LLPs")

² See: <https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>

³ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886959/CJRS_DIRECTION_N02_20_05_2020.pdf#Second%20Treasury%20Direction

⁴ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895778/Further_Treasury_Direction_made_on_25_June_2020_under_Sections_71_and_76_of_the_Coronavirus_Act_2020.pdf

who are treated as employees for UK tax purposes (so called ‘salaried members’); (iii) agency workers; (iv) apprentices; and (v) so-called ‘limb (b) workers’, who are individuals that have contracted to perform work or provide services personally but are neither employees nor independent contractors (for simplicity, we use the term ‘employees’ and ‘employers’ in this part II).

- The scheme is also available to employees who were made redundant or otherwise stopped working on or after February 28, 2020 or on or after March 19, 2020 if they are re-employed and then furloughed, subject to having been hired, on a PAYE payroll and notified in an RTI submission on or before February 28, 2020 or March 19, 2020, as applicable.
- Employees put on unpaid leave on or after February 28, 2020 are eligible to be furloughed instead (no claim may be made under the scheme in respect of the unpaid leave period), whilst those who were already on a sabbatical or unpaid leave on that date can be furloughed only after their originally agreed or contemplated return date.
- The UK government has confirmed that employees who transfer by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 after February 28, 2020 can be furloughed by their new employer.
- The UK government has also clarified that employees who are unable to work, including from home, because they have caring responsibilities resulting from COVID-19 can be furloughed (for example, parents who need to look after children following school closures).
- Vulnerable employees shielding (or staying at home with someone who is shielding) in accordance with government guidance⁵ can also be furloughed (such

employees would not qualify for Statutory Sick Pay whilst on furlough).

- However, the scheme is not intended to apply to employees during short-term periods of incapacity for work or while they are self-isolating in accordance with government guidance.⁶ Such employees should instead receive Statutory Sick Pay (see further, part III para G. below) and may be entitled to receive enhanced contractual sick pay from their employer during the relevant period, but can be furloughed thereafter. If an employee becomes sick whilst on furlough it is up to the employer to decide whether to move them onto sick pay or keep them on their furloughed rate of pay.
- Foreign nationals on all categories of visa can be furloughed and, for internationally mobile employees or in cross-border situations, the test is simply whether an employee was, as at March 19, 2020, paid via a UK PAYE payroll scheme (essentially, an employee who has been ‘paying in’ to the UK tax and social security system). This will have been determined, for the 2019-20 tax year, by considering whether a particular employee is ‘resident’ and/or ‘domiciled’ in the UK for tax purposes (or is performing duties in the UK that are more than just incidental to non-UK duties), and whether the employer has ‘sufficient connection’ in the UK to be subject to the PAYE regime.

C. *What can be claimed?*

- Until July 31, 2020, an employer can claim 80% of an eligible employee’s gross regular salary or wage (as in the last pay period prior to March 19, 2020), up to a maximum of £2,500 per month. Detailed guidance on how to calculate

⁵ See: <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

⁶ See: <https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection>

this amount is available,⁷ as well as a helpful online calculator⁸ and a step by step guide⁹ to make a claim via the online portal¹⁰. Please see below for changes to the amounts that can be claimed under the scheme from August 1, 2020 onwards.

- An employer can, in addition to the capped £2,500, claim the cost of paying employer National Insurance contributions and the minimum employer pension contributions required under the UK auto-enrolment regime in respect of the government-funded portion (for which the employer remains responsible, unless an employee has opted out of auto-enrolment).
- Where an employee's pay varies and they have been employed for fewer than 12 months, the claim amount should be an average of their monthly earnings since starting work until being furloughed. If they have been employed for more than 12 months, it should be the higher of the same month's earnings in the previous year or their average monthly earnings in the 2019-20 tax year. If the relevant employee has been working for the employer for less than a month, the claim amount should be 80% of their earnings so far.
- An employee's 'regular salary or wage' includes amounts that are neither conditional nor discretionary (which excludes tips, for example), does not constitute a benefit in kind, and does not vary according to business or personal performance or the contribution made or duties performed by the employee, unless the variation arises from a legally enforceable agreement, understanding, scheme or transaction (so, in the case of commission, for example, it depends on the circumstances).
- For a salaried member of an LLP, the relevant amount is the member's profit allocation, excluding any amounts which are determined by their performance or the overall performance of the LLP.
- Claims under the scheme can be backdated to March 1, 2020.

D. What does being furloughed involve?

- An employee will be considered 'furloughed' if they are placed on a temporary leave of absence by their employer, for a minimum period of 21 calendar days, and they do not undertake any work, provide any services or generate any revenue for their employer (or any connected organisation) during that period. An initial furlough period can be extended for any period of time, and an employee can be furloughed more than once. However, see below on 'flexible furlough' arrangements from July 1, 2020.
- If the employee's employment contract allows, they may undertake other employment whilst their current employer has placed them on furlough, and this will not affect the amount that can be claimed under the scheme in respect of that employee. The employee must, however, be able to return to work for the employer that placed them on furlough if that furlough is brought to an end.
- Employees can volunteer for other organisations, and undertaking training directly relevant to their employer whilst on furlough is encouraged. However, employees must be paid at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage, as applicable, during any time spent training, and the training must not directly involve the provision of

⁷ See: <https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme>

⁸ See: <https://www.tax.service.gov.uk/job-retention-scheme-calculator/>

⁹ See: <https://www.gov.uk/government/publications/coronavirus-job-retention-scheme-step-by-step-guide-for-employers>

¹⁰ See the "claim now" link:

<https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

services, the generation of income or profit, or contribute to the business activities of the employer.

- Company directors may, whilst on furlough, undertake work to fulfil their statutory duties or obligations relating to the filing of company accounts or the provision of other information relating to the administration of the company. They may also make claims under the scheme for company employees, and pay salaries and wages.
- Employees who act as union or non-union representatives may undertake duties and activities for purposes of individual or collective representation whilst on furlough, provided they do not, in doing so, provide any services or generate any revenue for their employer (or any connected organisation).
- Employees will continue to accrue, and can take, annual leave whilst on furlough. However, an employee's normal rate of holiday pay will apply, meaning that the UK government's grant will need to be topped up during holidays.

E. How do I put someone on furlough?

- If any employee has been identified as being at risk of redundancy, the option of being placed on furlough could naturally be discussed in the context of individual and/or collective consultation as a way of avoiding (or postponing; the grant can be used to pay notice pay prior to termination, but not to make a payment in lieu of notice or to pay a statutory redundancy payment) the dismissal. However, as a general matter, employers are unlikely to have either an express or implied unilateral right to place an employee on furlough on reduced pay, and so any such arrangement should be discussed and agreed with each affected employee (and/or their representatives in the case of collective redundancies) as a temporary variation of contract.
- An employer must, in all cases, agree with the employee that they are a 'furloughed

worker', but the employee does not strictly need to provide a written response where their agreement is valid as a matter of employment law. This would allow an employee to give their agreement orally, or potentially for the employer to rely on deemed consent in appropriate circumstances where there are practical difficulties obtaining a more formal response.

- However, the employer must provide a formal 'instruction' (also described in the guidance as a 'confirmation' or 'notification') to cease all work in relation to their employment, and be furloughed. That communication must be in writing, although may be in electronic form, and a copy must be retained until at least June 30, 2025.
- In respect of office-holders and members of LLPs, any furlough arrangement should be adopted formally as a decision of the company or LLP.
- If an employer has fewer than 100 furloughed staff, claim details need to be entered individually in the online claim portal (see link below), whereas employers with 100 or more furloughed staff can upload collated information in certain types of electronic files.

F. When will the scheme end?

- The scheme closed to new entrants on July 1: employers can only claim for furlough periods after July 1 in respect of employees who had previously been furloughed for at least 3 consecutive weeks between March 1 and June 30 (essentially, were on furlough by June 10, 2020). Employers have until July 31, 2020 to make any claims in respect of the period to June 30, 2020.
- The scheme will gradually be phased out until its end date on October 31, 2020.
- From July 1, 2020 (a month earlier than previously announced) employers are able to bring furloughed employees back to work for any amount of time, and on any shift pattern. These employees will be

on ‘flexible furlough’. The employer will still be able to claim under the scheme for the employees’ normal hours not worked (subject to the caps applying prior to July 1, 2020) but will have to pay in full for any hours worked (and will be responsible for tax and National Insurance contributions on those payments). To remain eligible for flexible furlough, employers must agree a new flexible furloughing arrangement with their employees and confirm that agreement in writing. Guidance on flexible furloughing and how employers can claim was published on July 1, 2020¹¹.

- From August 1, 2020, the level of UK government grant will be slowly tapered to reflect a gradual return to work, and employers must begin to contribute to furloughed employees’ salaries.
- During August, the UK government will continue to pay 80% of an eligible employee’s gross regular salary or wage, up to a maximum of £2,500 per month, but employers cannot claim for the associated National Insurance and pension contributions.
- During September, the UK government’s grant drops to 70% of an employee’s salary (up to a maximum of £2,187.50), with employers being required to top up to 80%, and again with claims for the associated National Insurance and pension contributions precluded.
- During October, the UK government will only reimburse 60% of an employee’s salary (up to a maximum of £1,875), and employers must top up to 80% and pay associated National Insurance and pension contributions.
- The Chancellor said of these changes that *“now, as we begin to re-open our country and kick-start our economy, these schemes will adjust to ensure those who*

are able to work can do so, while remaining amongst the most generous in the world.”

G. Job Retention Bonus

- As part of the Chancellor’s ‘Plan for Jobs 2020’ presented to Parliament on July 8, 2020, the Chancellor announced that businesses will receive a one-off Job Retention Bonus (“JRB”) of £1,000 for each worker furloughed under the scheme who is brought back into work, and who remains in employment until at least January 31, 2021. A ministerial direction was issued by the Chancellor on the JRB, in response to correspondence from the Chief Executive of HMRC¹².

III. Financial support for small- or medium-sized UK businesses

A. Term Funding Scheme

The MPC voted on March 19, 2020 to enlarge the new Term Funding scheme with additional incentives for Small- and Medium-sized Enterprises (“TFSME”), which was announced on March 11, 2020. The TFSME scheme will be financed by the issuance of central bank reserves.

The TFSME scheme will offer, over the next 12 months, 4-year funding of at least 10% (increased from an initial 5% allowance) of banks’ lending to the real economy at interest rates at or close to Bank Rate. Additional funding will be available for banks that increase lending, especially to small- and medium-sized enterprises (“SMEs”). It is anticipated that the TFSME scheme will:

- help transmit the effect of the reduction in Bank Rate to the real economy;
- provide participants with a cost-effective source of funding to support additional lending to the real economy; and
- incentivise banks to: (i) provide credit to businesses and households to bridge through a period of economic disruption; and (ii) support lending to SMEs that

¹¹ See: <https://www.gov.uk/government/news/flexible-furlough-scheme-starts-today>

¹² See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899022/Job_Retention_Bonus_-_Ministerial_Direction.pdf

typically bear the brunt of economic downturns.

Eligible participants in the TFSME are banks and building societies that are participants in the Bank's Sterling Monetary Framework ("SMF"), and that are signed up to access the Discount Window Facility ("DWF"). SMF participants that are not already signed up to the DWF can apply for access alongside applying to use the TFSME. Institutions that are not currently SMF participants can apply to join, subject to the Bank's usual eligibility criteria. Collateral must be pre-positioned with the Bank. Eligible collateral consists of all collateral currently eligible in the SMF.

The TFSME opened for drawings on April 15, 2020, sooner than anticipated. The Bank estimates that this scheme should lead to around £100 billion being provided in term funding.

On May 2, 2020, the Bank announced amendments to the TFSME to further support the new Bounce Back Loans Scheme ("BBLs") discussed below. These amendments enable TFSME participants to extend the term of some funding they access via the TFSME to align with the 6-year term of loans provided through the BBLs. The amount of TFSME drawings that can be extended is expected to be determined in the first half of 2021, based on the quantity of BBLs loans outstanding at that time.

As of July 8, 2020, it was reported that over £18.3 billion of funding has been made available under the TFSME since the start of the COVID-19 crisis.

B. Asset Purchase Facility

On March 19, 2020, the MPC also voted to increase the Bank's holdings of UK government and corporate bonds by £200 billion (to a total of £645 billion). The additional purchases of bonds (the majority of which will comprise UK government bonds but will include some additional sterling non-financial investment-

grade corporate bonds) will be funded by the issuance of central bank reserves.

On April 2, 2020, the Bank announced that it would utilise the Corporate Bond Purchase Scheme ("CBPS") that was launched in August 2016 to purchase at least £10 billion of eligible sterling non-financial corporate bonds in coming months, increasing the level of purchased corporate bonds to at least £20 billion. The Bank has also increased the maximum purchase size per bond in each auction, as stipulated under the CBPS, from £10 million to £20 million.

An updated list of corporate bonds eligible for purchase under the scheme is available on the Bank's website.¹³ Eligible bonds comprise conventional investment-grade senior unsecured or secured, unsubordinated debt securities that are, *inter alia*, admitted to official listing on an EU¹⁴ stock exchange and have a minimum residual maturity of 12 months (no perpetual debt). On June 4, 2020, the Bank updated the list of eligible securities to include additional bonds with 3 months to maturity par call features. Bonds with complex or non-standard structures and convertible or exchangeable bonds will not be eligible.

Eligible issuers include companies (including their finance subsidiaries) that make a material contribution to the UK economy, subject to the restrictions set out above. Companies with significant employment in the UK or headquartered in the UK will normally meet this requirement, but the Bank will also consider whether a company generates significant revenues in the UK, serves a large number of customers in the UK or has a number of operating sites in the UK. Corporate bonds issued by banks, building societies, insurance companies and other financial sector entities regulated by the Bank or the Financial Conduct Authority ("FCA") will not be eligible. Bonds will also not be eligible if issued by leveraged investment vehicles or from companies within groups which are predominantly active in businesses subject to financial sector regulation.

¹³ See: <https://www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide/information-for-participants>

¹⁴ We presume that this includes the UK.

The Bank will undertake operations via reverse auctions which began on April 7, 2020. The Bank intends to continue to hold three purchase operations a week on Tuesdays, Wednesdays and Thursdays. The Bank will keep the size of the scheme and purchase pace under review in light of prevailing market conditions and any future MPC decisions.

C. Contingent Term Repo Facility

On March 24, 2020, the Bank announced that it was activating the ‘Contingent Term Repo Facility’ (“CTRF”) as a temporary enhancement to its existing sterling liquidity insurance facilities with operations initially run on March 26, 2020 and April 2, 2020.

The CTRF is a flexible liquidity insurance tool that allows participants to borrow central bank reserves (cash), in all major currencies, in exchange for collateral. Eligible collateral comprises collateral assets eligible in the SMF. The CTRF is open to banks and building societies that signed up to the DWF.

The CTRF provided funding for a period of either 1 or 3 months, allowing participants to use the CTRF as a way to bridge beyond the point at which drawings under the TFSME could be made in order to support lending to the real economy as quickly as possible.

The 3-month term and 1-month term CTRF operations were extended through May 2020 after which, in light of more stable funding market conditions and usage patterns, the Bank discontinued the 3-month term CTRF operations. On June 19, 2020, the Bank announced the discontinuation of the 1-month term CTRF operations, the final operation taking place on June 26, 2020.

The Bank’s regular liquidity insurance facilities will continue to operate, including the 6-month Indexed Long-Term Repo which currently operates weekly; and the on-demand DWF.

The Bank will keep the situation under review and has stated that operation of the CTRF can be reintroduced at any stage if justified by market conditions.

D. Coronavirus Business Interruption Loan Scheme

On March 11, 2020 the Chancellor announced the ‘Coronavirus Business Interruption Loan Scheme’ (“CBILS”), a temporary loan scheme delivered by the British Business Bank, which became available the week commencing March 23, 2020.

The scheme provides support to UK SMEs with a turnover of no more than £45 million per year, for up to 6 years for term loans and asset finance facilities, and 3 years for overdrafts and invoice finance facilities. The scheme provides participating lenders with a government-backed guarantee of 80% on each loan (subject to pre-lender cap on claims) of up to £5 million and, with the UK government covering the first 12 months of interest payments and any lender-levied fees, seeks to bolster lenders’ confidence in continuing to provide financing to SMEs.

More than 90 accredited lenders including Barclays, RBS, HSBC and Lloyds are currently providing funds under the scheme as term loans, overdrafts, or asset-based lending secured on equipment or invoices.

Eligibility will be determined by application. The CBILS was initially limited to SMEs that were unable to secure regular commercial financing. However, on April 2, 2020 the Chancellor indicated that the scheme would be made available to all viable SMEs affected by COVID-19, regardless of whether they could secure commercial financing outside of the scheme.

For facilities below £250,000, the Chancellor also confirmed that accredited lenders are not permitted to take a personal guarantee. For larger facilities, personal guarantees may still be required at a lender’s discretion; however, recoveries are capped at 20% of the outstanding balance of the facility after the proceeds of business assets have been applied. Furthermore, principal private residences cannot be taken as security under the CBILS. These amendments will apply retroactively to any financing arrangements that have already been put into

place under the scheme as well as all new facilities.

As of July 12, 2020, it was reported that £11.85 billion of loans had been approved under the CBILS since the start of the COVID-19 crisis.¹⁵

E. Support for innovative businesses

On April 20, 2020 the Chancellor announced a £1.25 billion COVID-19 support package to assist businesses driving innovation in the UK (ranging from tech to life sciences), which may be unable to access other business support programmes (such as CBILS), and are reliant on equity investment.

Future Fund. The government committed an initial £250 million towards a loan scheme (the “Future Fund”) for high-growth companies that have been impacted by COVID-19. The fund will be delivered in partnership with the British Business Bank, and will provide funding from the government and the private sector on a match funded basis.

The scheme aims to provide government loans to UK-based companies ranging between £125,000 and £5 million, subject to at least equal match funding from private investors. It is intended that these loans will automatically convert into equity on the company’s next qualifying funding round, or at the end of the loan term if they are not repaid.

To be eligible for this scheme, a business must be an unlisted UK registered company that has previously raised at least £250,000 in equity investment from third party investors in the last 5 years.

The scheme opened for applications on May 20, 2020, and is expected to remain open until the end of September 2020. As of July 12, it was reported that over £419.6 million of convertible loans had been approved under the scheme¹⁶ – exceeding the initial £250 million allocated by the Treasury. It is anticipated that the government will expand the scheme further to allow more

start-up businesses to join, given the high demand.

Continuity grants and loans scheme. The package also included a further £750 million in grants and loans that will be available through Innovate UK’s grants and loan scheme to SMEs focusing on research and development. This scheme was launched on May 15, 2020.

Under this scheme, up to £90 million was made available in the form of continuity grants for SMEs and existing Innovate UK customers whose projects were at risk as a result of COVID-19. These grants aimed to support eligible companies that expected to have a funding gap (between £25,000 and £250,000), and was made available until May 29, 2020.

Up to £210 million will also be made available in continuity loans to SMEs and third sector organisations that are experiencing difficulties in continuing a live project for which they have an award from Innovate UK. These loans aim to support eligible companies that expect to have a larger funding gap as a result of COVID-19 of between £250,000 and £1.6 million. Continuity loans will be open for applications until the earlier of the date on which all available funds have been allocated or December 31, 2020.¹⁷

F. Bounce Back Loans

On May 4, 2020, HM Treasury and the Bank launched the BBLs to enable smaller businesses to access financing more quickly during the COVID-19 crisis. Under this scheme, eligible businesses may borrow up to 25% of their annual turnover, with the maximum loan amount capped at £50,000.

Loans provided under the scheme will be fully guaranteed by the government, with no repayments due and no fees or interest payable for the first 12 months, following which the interest rate on such loans will be 2.5% per annum. Under the scheme, each loan will have a 6-year term but may be repaid early without

¹⁵ See: <https://www.gov.uk/government/collections/hm-treasury-coronavirus-covid-19-business-loan-scheme-statistics>

¹⁶ See: <https://www.gov.uk/government/collections/hm-treasury-coronavirus-covid-19-business-loan-scheme-statistics>

¹⁷ See: <https://www.gov.uk/government/publications/access-coronavirus-business-innovation-support-package>

incurring any fees or penalties. It was reported that over £2 billion of loans were approved in the first 24 hours of the launch of the BBLs.

To be eligible, businesses must be based in the UK, must have been established before March 1, 2020 and must have been adversely impacted by the outbreak. Eligible businesses include banks, insurers and reinsurers (but not insurance brokers); public-sector bodies; and state-funded primary and secondary schools. Businesses already benefiting from the CBILS, CLBILS or the CCFE (each as defined below under Part IV) will not be eligible. However, businesses that have already received a loan of up to £50,000 under one of these schemes can transfer it into the BBLs (to take advantage of the 6-year term, for example). Businesses seeking to transfer their loans to the BBLs have until November 4, 2020 to arrange this with their lender.

The government has made changes to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, which defines the “regulated activities” for which authorisation from the FCA or Prudential Regulation Authority (“PRA”) is needed in the UK. Lending under BBLs that would otherwise have resulted in regulated credit agreements (i.e., loans of £25,000 or under to sole traders, certain small partnerships and other relevant small businesses) will fall outside regulated lending activity. This means that the usual regulatory regime that applies to regulated credit agreements, including the requirements in the Consumer Credit Act 1974 (the “CCA”), will not apply to lending or post-lending (other than debt collecting) activity under BBLs. In addition, primary legislation, intended to have retrospective effect from May 4, 2020, will also be introduced to disapply sections 140A-140C of the CCA for BBLs lending. These sections cover the ability of the court to make determinations on the fairness of the relationships between debtors and creditors, which would limit the scope of any complaints or claims raised by borrowers.

There are currently 26 lenders participating in the BBLs including many large retail banks. Banks subject to the UK leverage ratio will also be able to apply to the PRA for a “modification by consent” allowing them to exclude loans under the BBLs from the UK leverage ratio exposure measure.

As of July 12, 2020, it was reported that £31.7 billion of loans had been approved under the BBLs since its implementation.¹⁸

G. Support for UK employers

Under the ‘Coronavirus Statutory Sick Pay Rebate Scheme’, employers with fewer than 250 employees (which is estimated to include approximately 2 million employers), as at February 28, 2020, are eligible for a government refund of up to 14 days of Statutory Sick Pay paid to any employee who, on or after March 13, 2020 is either ill or required to self-isolate because of COVID-19. Under the Act, an employer who fraudulently or negligently receives a refund is liable to a penalty not exceeding £3,000.

Statutory Sick Pay is currently paid at a rate of £95.85 per week to eligible employees on a five-day work schedule (with different amounts payable to those on other types of schedules), for up to 28 weeks in any period of incapacity for work or in any series of linked periods of incapacity for work. The online claim portal is now open¹⁹.

With effect from March 13, 2020, the eligibility criteria for Statutory Sick Pay were also relaxed in two respects:

- Statutory Sick Pay is payable from the first day of sickness absence, as an enhancement to the usual rule (which provides for payment from the fourth qualifying day in any period of incapacity for work); and
- Statutory Sick Pay is payable to any employee who is ill because of COVID-19, or who is following UK

¹⁸ See: <https://www.gov.uk/government/collections/hm-treasury-coronavirus-covid-19-business-loan-scheme-statistics>

¹⁹ See: <https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-your-employees-due-to-coronavirus-covid-19>

government advice²⁰ to self-isolate or shield, whether or not they are ill or showing any symptoms of COVID-19.

H. Grants for certain small enterprises

Approximately 700,000 small businesses that already pay little or no business rates are eligible for £10,000 grants to help meet business costs (the UK government estimates that this is roughly the cost of 3 months of rent). Local authorities will write to businesses that are eligible for grants, and funding commenced in early April 2020.

Additionally, a cash grant of up to £25,000 may be available for businesses in the retail, hospitality and leisure sectors operating from premises that have a rateable value (for business rates purposes) of over £15,000 and less than £51,000.

IV. Financial support for larger UK businesses

A. Covid Corporate Financing Facility

On March 23, 2020, HM Treasury and the Bank launched the ‘Covid Corporate Financing Facility’ (“CCFF”) to provide funding to businesses by purchasing, at a minimum spread over reference rates, newly issued commercial paper of up to 1-year maturity and meeting certain other eligibility criteria issued by non-financial businesses (including their finance subsidiaries) which are considered to make a material contribution to the UK economy.

Funding under the scheme is provided on terms comparable to those prevailing in markets in the period before the COVID-19 economic shock, and is open to firms that can demonstrate they were in sound financial health prior to the shock (i.e., companies that had a short- or long-term rating of investment grade, as at March 1, 2020, or equivalent). The scheme is intended to help such businesses across a range of sectors that have been affected by a short-term disruption of cash flow to finance their short-term liabilities.

UK incorporated companies, including those with foreign-incorporated parents and a genuine business in the UK, companies with significant employment in the UK or firms with their headquarters in the UK, should normally qualify for the CCFF scheme. Eligibility decisions will be made by the Bank’s risk management staff. Commercial paper issued by non-bank financial companies will, in principle, be eligible, subject to the Bank being satisfied that the company makes a material contribution to corporate financing in the UK.

Commercial paper issued by leveraged investment vehicles or from companies within groups that are predominantly banks, investment banks or building societies will not be eligible.

Purchases will be made in the primary market via eligible dealers and after issuance from eligible counterparties in the secondary market.

The CCFF will operate for an initial period of 12 months, and the Bank will provide 6 months’ notice of withdrawal of the facility.

On May 19, 2020, HM Treasury announced that companies receiving funding under the CCFF for a term extending beyond May 19, 2021 will be required to exercise restraint in respect of dividend payments and other capital distributions as well as senior pay. Issuers will be required to provide a letter of commitment in relation to this if an increase in an issuer’s CCFF limit, over and above that suggested by the issuer’s investment rating, is requested and approved; and/or a CCFF transaction is entered which involves CP maturing on or after May 19, 2021. Companies participating in the scheme will also be able to repay their drawings early, at their discretion. Since June 4, 2020, HM Treasury and the Bank also publish the names of businesses that have drawn funds under the CCFF, as well as the amounts borrowed under the scheme every Thursday at 3:00 pm (GMT). Publication is intended to make the scheme more transparent

²⁰ See: <https://www.nhs.uk/conditions/coronavirus-covid-19/what-to-do-if-you-or-someone-you-live-with-has-coronavirus-symptoms/>

and enable participating businesses to demonstrate their access to the scheme.

More information regarding the operation of the CCFF can be found in our memorandum²¹ and on the Bank's website.²² As of July 8, 2020, it was reported that around £18.25 billion of support has been made available under the CCFF.

B. Coronavirus Large Business Interruption Loan Scheme

On April 2, 2020, HM Treasury announced the 'Coronavirus Large Business Interruption Loan Scheme' ("CLBILS") which is intended to provide support to larger UK businesses which are unable to obtain relief under the CBILS (see part III para D. above). The scheme aims to support UK businesses that were viable before the COVID-19 outbreak but which now face significant cash flow difficulties, and are unable to secure standard commercial financing. The CLBILS launched on April 20, 2020 and was updated on May 19, 2020.

The scheme will provide participating accredited lenders with a government-backed partial guarantee (80%) on each loan provided under the scheme. There are currently 19 accredited lenders taking part in the scheme. Lenders can provide loans of: (i) up to £25 million to UK businesses with an annual turnover of over £45 million up to £250 million; and (ii) up to £50 million to UK businesses with an annual turnover of over £250 million, available on repayment terms of up to 3 years, in order to encourage lending to medium-sized and larger UK businesses. On May 19, 2020, HM Treasury announced that loan amounts for eligible firms with a turnover of over £250 million would be increased from £50 million to the lesser of 25% of a firm's turnover or £200 million. This change came into effect on May 26, 2020.

Lenders are not permitted to take personal guarantees of any form in respect of facilities below £250,000. For facilities above £250,000, personal guarantees may still be required but

claims are capped at 20% of losses after other recoveries have been applied.

Businesses in all sectors are eligible to apply for CLBILS (including companies backed by a private-equity sponsor, which will be treated as standalone applicants for the scheme and whose turnover will be assessed independently from the sponsor's other investment portfolio companies) with the exception of banks and building societies, insurers and reinsurers (but not insurance brokers), public sector organisations, including state-funded primary and secondary schools. Businesses that have received support under the CCFF are also precluded from accessing funding under this scheme.

The scheme will help give eligible businesses access to term loans, revolving credit facilities (including overdrafts), invoice finance and asset finance. It is intended that facilities backed by a guarantee under CLBILS will be offered at commercial rates of interest.

Borrowings under the CLBILS which are larger than £50 million will be subject to restrictions on dividend payments, senior pay and share buybacks during the term of the loan, including a ban on dividend payments and cash bonuses. Borrowers may, however, make dividend payments to the extent these were declared before the loan was taken out. Under the restrictions on executive pay, borrowers cannot pay any cash bonuses or award pay rises to senior management (including the board) except in cases where such payments:

- were declared before the CLBILS loan was taken out;
- are in line with similar payments made in the preceding 12 months; and
- would not have a material negative impact on the borrower's ability to repay the loan.

Further details regarding the CLBILS are available on the British Business Bank's

²¹ See: <https://www.clearygottlieb.com/news-and-insights/publication-listing/covid19-covid-corporate-financing-facility-explained>

²² See: <https://www.bankofengland.co.uk/markets/covid-corporate-financing-facility>

website²³ and set out in our memorandum.²⁴ As of July 12, 2020, it was reported that over £2.7 billion of loans had been approved under the CLBILS since the start of the COVID-19 crisis.²⁵

V. Financial support for the self-employed and for members of partnerships

Through guidance notes and two directions given on April 30, 2020 and July 1, 2020^{26,27} by HM Treasury to HMRC, pursuant to the Act, the UK government has confirmed the creation, modification and extension of the ‘Self-Employment Income Support Scheme’. Under this scheme, the UK government is providing financial support to the self-employed (including members of partnerships) at a level which is comparable to that provided to employees under the Coronavirus Job Retention Scheme (see part II above).

Two separate grants can be claimed under the scheme: (i) first, a grant equal to 80% of average monthly trading profits, up to a cap of £7,500, which is paid in a single instalment covering March, April and May 2020; and (ii) second, a grant equal to 70% of average monthly trading profits, up to a cap of £6,570, which is paid in a single instalment covering June, July and August 2020. Unlike the Coronavirus Job Retention Scheme, recipients of the grant can continue to work or take on other employment, including voluntary work, during the claim period.

Grants under the scheme are subject to income tax and self-employed National Insurance contributions.

The scheme is available if:

- You are a self-employed individual or a member of a partnership in the UK;
- You have lost trading or partnership trading profits as a result of COVID-19,

and are able to confirm to HMRC that your business has been adversely affected by COVID-19 or your business *could* be adversely affected by COVID-19 because you are unable to work as you are shielding, self-isolating, or have caring responsibilities, or you have had to scale down or suspend trading due to your supply chain being interrupted or your staff being unable to work;

- You have either filed a tax return for the 2018-19 tax year as self-employed or as a member of a trading partnership or, if you were late to file, you did so before April 23, 2020;
- You traded in the 2019-20 tax year, you are trading (or would be except for COVID-19) when you apply for the grant, and you intend to continue to trade in the 2020-21 tax year; and
- You have trading profits of no more than £50,000, and they are at least equal to your non-trading income.

Grants under the scheme are not considered ‘access to public funds’ and consequently one can claim for the grants on all categories of work visa.

The Chancellor believes that 95% of those who receive the majority of their income from self-employment or trading partnerships will qualify under the scheme; the remaining 5% having an average income of c.£200,000.

The online claim service for the first grant²⁸ opened on May 13, 2020. HMRC have also been contacting potentially eligible individuals directly since May 4, 2020, and inviting applications. Claims for this first grant closed on July 13, 2020. The online claim service for the

²³ See: <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/clbils/faqs-for-businesses/#f7>

²⁴ See: <https://www.clearygottlieb.com/-/media/files/alert-memos-2020/coronavirus-large-business-interruption-loan-scheme-pdf.pdf>

²⁵ See: <https://www.gov.uk/government/collections/hm-treasury-coronavirus-covid-19-business-loan-scheme-statistics>

²⁶ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882593/SEISS_Direction_Final_-_SIGNED.pdf

²⁷ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897184/SEISS_Extension_Direction_final_19_Oct_closure_date_-_FINAL_SIGNED.pdf

²⁸ See: <https://www.gov.uk/guidance/claim-a-grant-through-the-self-employment-income-support-scheme>

second and final grant will open on August 17, 2020.

Interestingly, in an early public address on the topic of this scheme, the Chancellor made what he called a “fair and reasonable observation” on the UK tax and social security system, noting that in light of parity between the scheme and the Coronavirus Job Retention Scheme, it is now much harder to justify inconsistencies in the amount of tax and National Insurance paid by employees and the self-employed “if we all want to benefit from State support”. Whilst refusing to provide any further details at the time, he declared that “we must all pay in equally in future.”

The scheme supplements for the self-employed the following three support measures previously announced:

- The Coronavirus Business Interruption Loan Scheme (see part III D. above), which is available to the self-employed provided their activity is channelled through a business account;
- As described further in part VII B. below, the next income tax payments on account due under the self-assessment system, which would otherwise be due by July 31, 2020, may be deferred to the end of January 2021; and
- The “minimum income floor” will not be applied during any period a self-employed person is required to stay at home or is ill as a result of COVID-19 prior to April 6, 2020 nor generally from April 6, 2020 for the duration of the pandemic, if they wish to apply for monthly welfare payments (Universal Credit) to help with living costs.

VI. Coordinated action with other central banks to enhance the provision of global US dollar liquidity

In a measure that is also calculated to bolster the supply of credit to households and businesses, the Bank will join the Bank of Canada, the Bank of

Japan, the European Central Bank, the Federal Reserve and the Swiss National Bank in increasing the frequency of 7-day maturity operations on their standing US dollar liquidity swap lines, which are an important liquidity backstop to mitigate strains in global funding markets, from weekly to daily. These daily operations commenced on March 23, 2020, and will be carried out until at least the end of April 2020. The central banks will also continue to hold weekly 84-day maturity operations.

VII. Fiscal measures in response to COVID-19

A. Tax deferral

The original package of measures announced by the Chancellor on March 20, 2020 allowed UK value added tax (“VAT”) payments due from businesses to HMRC in the period between March 20 and June 30 this year to be deferred, at the taxpayer’s option.

Businesses that opted to defer continued to be required to submit their VAT returns on time but have been given until March 31, 2021 to account for the relevant amounts (with the effect of easing cash-flow problems caused by the impact of COVID-19). Late payment interest and penalties will not be charged in connection with deferred payments. As the deferral scheme is now closed, HMRC’s guidance has been updated to focus on what participating businesses should do next, including reinstating direct debits and paying or making payments towards deferred VAT on or before March 31, 2021.²⁹

Similarly, payments on account that are due under the Self-Assessment system on July 31, 2020 may, if the impact of COVID-19 causes a taxpayer difficulty in making payment on time, be deferred to January 31, 2021. The UK government has indicated that anyone who is due to make a Self-Assessment payment on account on July 31 (and not just those who are self-employed) is eligible for this optional deferment. No application is required to take advantage of the deferral scheme, and it has been confirmed in guidance that no late payment penalties or

²⁹ See: <https://www.gov.uk/guidance/deferral-of-vat-payments-due-to-coronavirus-covid-19>

interest will be levied where payment is deferred to January 2021³⁰. However, after the deferral ends, usual interest, penalties and collection procedures will apply to missed payments.

Taxpayers are able to set up ‘budget payment plans’ with HMRC during the deferral period to help them put aside funds to cover the deferred payment on account when it becomes due. It may also be possible to add payments on account to arrangements through HMRC’s “Time to Pay” service (see *Section B*, below).

After its initial publication, the government guidance³¹ on the deferral was updated to refer simply to ‘payments on account’, rather than to ‘income tax payments on account’. This seemed to be aimed at clarifying that any deferral extends to the full Self-Assessment payment that a taxpayer is due to make on July 31, 2020 (which may relate to a combination of income tax and National Insurance contributions), and not only to the component of such payment that relates to income tax.

B. Additional support for payment of tax

Where businesses or self-employed individuals are unable to make tax-related payments on time (other than those payments which are already subject to the VAT and Self-Assessment deferral schemes described above), they are invited to call a dedicated COVID-19 helpline established by HMRC: details are available on the gov.uk website.³²

Taxpayers who are in financial distress and have outstanding tax liabilities may potentially be given additional support by HMRC through its “Time to Pay” service. Any such arrangements (such as instalment plans and/or delayed repayments) are agreed on a case-by-case basis and are tailored to a taxpayer’s specific circumstances and liabilities.

C. Business rates relief

The UK government has introduced a business rates’ ‘holiday’ for businesses in the retail, leisure and hospitality sectors in England in the 2020-21

tax year. The scope of this measure extends to all businesses in those sectors, regardless of their size. A similar business rate holiday has been introduced for certain nurseries. No action is required from eligible businesses: the measure will be applied automatically to bills for the period beginning April 2020, with existing bills being reissued where necessary to reflect the holiday.

D. VAT reduction

As announced in the Chancellor’s ‘summer economic update’, delivered on July 8, 2020, VAT will be charged at 5% (rather than 20%) on certain supplies of food and non-alcoholic drinks from restaurants, pubs, cafés and similar premises in the UK, on supplies of hotel and holiday accommodation and on admission to certain attractions across the UK. The reduced VAT rate will apply from July 15, 2020 to January 12, 2021.

E. Delays to IR35 reforms and to commencement of DAC6 reporting

Reforms to the off-payroll working rules (“IR35”) that would have applied from April 6, 2020 for people contracting their services to large- or medium-sized organisations outside the public sector have been delayed by a year. The planned reforms are an anti-avoidance measure, aimed at contractors who are effectively providing the same service as employees, but via a limited company, giving a different tax result. Once live, they will mean that the recipient of services (where it is a large- or medium-sized organisation in the private sector) will be responsible for determining the employment status of the individual ultimately performing those services. The reforms are now provided for in Finance Bill 2020, to take effect from April 6, 2021.

Separately, HMRC has confirmed that it will take advantage of the ability, proposed by the European Commission, to delay by six months the first deadlines for filing and exchanging

³⁰ See: <https://www.gov.uk/guidance/defer-your-self-assessment-payment-on-account-due-to-coronavirus-covid-19>

³¹ See: <https://www.gov.uk/pay-self-assessment-tax-bill>

³² See: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/coronavirus-covid-19-helpline>

information pursuant to the Directive on Administrative Cooperation (generally known as “DAC6” and implemented in the UK by the International Tax Enforcement (Disclosable Arrangements) Regulations 2020)³³. DAC6 is a new reporting regime which will apply across the European Union as well as in the UK. It requires those involved in the design and implementation of arrangements which meet certain tax-related ‘hallmarks’ to report information on those arrangements to the tax authorities. Various other jurisdictions have also taken advantage of the ability to delay reporting.

The delay is intended to give those within the scope of the rules, who are already dealing with the effects of the pandemic, further time to ensure that they can comply with their obligations. The first reports will now be due by January 30, 2021, although no changes have been made to the scope of the transactions which will ultimately be reportable once the reporting obligations become live. Secondary legislation effecting the delay will come into force on July 30, 2020.

F. Temporary exemption for employer-reimbursed expenses that cover the cost of relevant home-office equipment and tax treatment of other benefits

Established tax exemptions apply where an employer provides home-office equipment directly and retains ownership of that equipment, and where the employee’s private use of the equipment is not significant. Relief is also available where an employee incurs a cost that is ‘wholly, exclusively and necessarily in the performance of the duties of their employment’.

Through crucial phases of the COVID-19 response, employees were encouraged to work from home wherever possible. To provide support for those employees, a new temporary exemption has been introduced to ensure that employer reimbursement for the cost of home-

office equipment expenses is exempt from tax and National Insurance contributions.

To be eligible for the new exemption, the expenditure must meet the following conditions:

- the equipment is obtained for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak; and
- the provision of the equipment would have been exempt from income tax under existing legislative provisions if it had been provided directly to the employee by or on behalf of the employer.³⁴

The exemption is conditional on the benefit of any reimbursement in respect of home-office equipment expenses being made available to all of an employer’s employees generally on similar terms.

The exemption applies for amounts reimbursed on or after June 11, 2020 but before the end of the tax year 2020-21 (although HMRC has indicated that, provided the conditions in the legislation are otherwise met, it will exercise its discretion not to collect tax or National Insurance contributions due on any reimbursement payments made between March 16, 2020 and June 11, 2020, when the relevant legislation came into force).

Relatedly, the government has confirmed the tax treatment of various other expenses, and benefits made available by employers to their employees during the pandemic. This guidance includes confirmation that the government will introduce an exemption from income tax and Class 1A National Insurance contributions for COVID-19 tests provided to employees outside the government’s national testing scheme³⁵.

G. HMRC advice for people choosing to give up their income to support their business or donate to charity during the coronavirus pandemic

³³ See: <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim800010>

³⁴ See: [https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-exemption-for-home-](https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses)

[office-expenses/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses](https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses/income-tax-and-national-insurance-contributions-exemption-for-home-office-expenses)

³⁵ See: <https://www.gov.uk/guidance/how-to-treat-certain-expenses-and-benefits-provided-to-employees-during-coronavirus-covid-19>

HMRC acknowledges that many people are choosing to give up part of their income to support their business or employer, or to donate to charity. Guidance has been published to help employers, directors and employees understand available options to support a business or employer, including³⁶:

- waiving their salary or bonuses before they are paid;
- waiving the right to any dividends; or
- giving salary or bonuses back to their employer after they have been paid.

H. Temporary zero rating of personal protective equipment (“PPE”) supplies for VAT purposes

Under the UK’s VAT rules, supplies of PPE generally attract VAT at the 20% rate. However, as a temporary measure, PPE that is supplied between May 1, 2020 and October 31, 2020 and that is recommended for use by Public Health England (in its guidance of April 24, 2020 titled ‘Guidance, COVID-19 personal protective equipment (PPE)’³⁷) will instead be zero-rated for UK VAT purposes.

Alongside the National Health Service, many of the types of business (such as residential care or healthcare providers) that currently need to purchase large quantities of PPE are wholly or partially unable to recover VAT paid to their suppliers, meaning that such VAT becomes an absolute cost. Acknowledging this, the temporary zero-rating is intended to relieve the tax burden associated with increased PPE purchases during the COVID-19 emergency.

This temporary zero rating will not affect the VAT treatment of PPE supplies that already fall within existing zero-rating or VAT exemption provisions. Guidance on the temporary zero-rating is available.³⁸

³⁶ See: <https://www.gov.uk/government/news/check-the-tax-rules-on-waiving-your-income-or-donating-to-charity>

³⁷ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881669/COVID-19_personal_protective_equipment_PPE_-_GOV.UK.pdf

I. Stamp Duty Land Tax

As part of the Chancellor’s ‘summer economic update’, delivered on July 8, 2020, Stamp Duty Land Tax (“SDLT”) rates payable on residential property purchases will be temporarily reduced. Purchases of residential property with a value of up to £500,000 will not (subject to the special rules for the purchase of a second or additional home) attract any SDLT. Residential purchases of over £500,000 will attract approximately £15,000 less SDLT. This measure will be effective for purchases which are completed or substantially performed between July 8, 2020 and March 31, 2021. The additional 3% rate of SDLT applicable to the purchase of a second or additional residential property will continue to apply to purchases of any value, including those below £500,000. The rates of SDLT are expected to revert to the prior rates and thresholds on April 1, 2021.

J. Taxation of coronavirus support payments

Draft legislation contained in Finance Bill 2020 confirms that particular grants to assist businesses, employers and individuals (including partners of partnerships) affected by the coronavirus crisis are within the scope of tax and included as revenue for income tax and corporation tax purposes. The proposed legislation covers payments under the Coronavirus Job Retention Scheme, the Self-Employment Income Support Scheme, the Coronavirus Statutory Sick Pay Rebate Scheme, coronavirus business support schemes and others that may be specified in directions or regulations issued by the government.

K. Tax residence

Ordinarily, days spent in the UK in a given tax year could be relevant to the UK’s statutory residence test (“SRT”), a series of rules used to

³⁸ See: <https://www.gov.uk/government/publications/vat-zero-rating-for-personal-protective-equipment/vat-zero-rating-for-personal-protective-equipment>. See also: <https://www.gov.uk/government/publications/revenue-and-customs-brief-4-2020-temporary-vat-zero-rating-of-personal-protective-equipment-ppe/revenue-and-customs-brief-4-2020-temporary-vat-zero-rating-of-personal-protective-equipment-ppe>

determine whether individuals are resident in the UK for tax purposes. An individual is considered to have spent a day in the UK if they are in the UK at the end (midnight) of the day in question.

As part of the UK's response to the COVID-19 outbreak, the services of skilled individuals from outside the UK may be required. As a result, such individuals may spend more days in the UK than anticipated before the crisis. Recognising this (and that a shift in tax residence in such circumstances may be an undesirable or burdensome outcome, both for the individual and, where relevant, for their employer), the Chancellor wrote to the chair of the Treasury Select Committee on April 9, 2020.³⁹ His letter proposed to relax the SRT requirements on a temporary basis, for individuals who meet specific criteria, so that time spent in the UK between March 1, 2020 and June 1, 2020 is disregarded for SRT purposes.

The changes are included in Finance Bill 2020, to take effect retrospectively (from March 1, 2020) once the Bill receives Royal Assent. They are targeted at medical and healthcare professionals who are in the UK for purposes connected with the detection, treatment or prevention of COVID-19 and at those who are in the UK because they are involved in the development or production of medicinal products (including vaccines), devices, equipment or facilities for the same purposes. The provisions in the Bill include the ability for the relaxation to be extended in duration by secondary legislation (to any date up to and including April 5, 2021), if the government considers it necessary as the COVID-19 situation develops.

The SRT rules already contain a mechanism which allows days spent in the UK by an individual to be disregarded for SRT purposes, in certain 'exceptional' circumstances. The new changes for skilled workers will sit alongside other COVID-19 related guidance⁴⁰ on this mechanism, published in March 2020. Whilst circumstances will generally be judged on a case-by-case basis, the guidance confirms that time

spent in the UK where an individual is, as a result of COVID-19:

- quarantined or advised by a health professional or by public health guidance to self-isolate in the UK;
- advised by official government advice not to travel from the UK;
- unable to leave the UK as a result of the closure of international borders; or
- asked by their employer to return to the UK temporarily,

will be considered exceptional, when considering whether days spent in the UK can be disregarded for SRT purposes.

It is worth noting that the changes announced to deal with the possibility of a shift in tax residence for individuals have not been mirrored by a similar announcement for companies. Under the UK's tax rules, it is possible for any non-UK incorporated company to become resident in the UK for tax purposes if 'central management and control' ("CMC") of its affairs is exercised in the UK. The CMC test is derived from case law and looks, broadly, at where the highest level of control of the company's business is carried on. Often CMC resides with the board of directors of a company (or the equivalent), but the test looks to the facts and circumstances in each case.

The CMC test carries the risk that a non-UK company may be regarded as tax resident in the UK without ceasing to be tax resident elsewhere (e.g., in its jurisdiction of incorporation). If a double tax treaty ("DTT") is in force between the UK and another relevant jurisdiction, the situation may be dealt with through a DTT 'tie-breaker' clause to determine where residence lies in practice. Failing this, a company may end up as a dual-resident for tax purposes.

Where a non-UK company intends to be (or not to be) UK tax-resident, it is common to adopt measures – such as controlling where and how board meetings are held, or written resolutions are signed – to ensure that CMC is (or is not)

³⁹ See: <https://www.gov.uk/government/publications/covid-19-temporary-changes-to-the-statutory-residence-test>

⁴⁰ See: <https://www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis/rdrm11005>

exercised in the UK. However, where individuals find themselves subject to travel restrictions as a result of the COVID-19 crisis, it may not be possible to carry out these measures as before. Travelling internationally to attend a board meeting or to sign a document, which may have been straightforward before the pandemic, has now become much more difficult. The result is that individuals with decision-making authority may find themselves in the ‘wrong’ place at the point where a business-critical decision needs to be made.

HMRC has issued revised guidance⁴¹ on company residence with this issue in mind. It addresses the position of non-UK companies seeking to avoid UK residence (but not the position of non-UK companies seeking to secure UK tax residence) and does not provide any safe harbours.

The guidance essentially states that HMRC considers the existing UK law and guidance on residence to be sufficiently flexible to deal with the circumstances created by COVID-19. It places an emphasis on the ‘holistic’ view that HMRC will take in assessing the location of CMC. Whilst the guidance does state that ‘a few board meetings’ being held in the UK, or ‘a few decisions’ being taken in the UK ‘over a short period of time’ will not necessarily result in a non-UK company becoming UK tax resident, it also stops short of ruling this out in a circumstance where business practices have changed solely as a result of the COVID-19 pandemic.

The underlying message is that each case will continue to be assessed on its own particular facts and circumstances. This is unlikely to provide companies with much practical reassurance that (without taking additional steps to manage the risk) their UK residence position will remain unaffected if lockdown measures and travel

restrictions remain in place for a long period of time.

More information is available in our memorandum on corporate tax residence and COVID-19.⁴²

VIII. Other UK developments

A. Shareholder meetings

The Corporate Insolvency and Governance Act, passed on May 25, 2020 (the “Act”), contains temporary measures with respect to the requirements for companies to hold annual general meetings (“AGMs”).⁴³ The legislation has retrospective effect from March 26, 2020 and will apply until September 30, 2020.⁴⁴ Importantly, these temporary flexibilities are available to companies irrespective of their articles of association.

Under the Act, companies required to hold an AGM between March 26, 2020 and September 30, 2020, whether pursuant to their articles or statute, have until September 30, 2020 to do so.⁴⁵ In cases where a company has already issued notice of its AGM, it may be preferable to make use of the extended time period provided by the Act, and consider postponing or adjourning the AGM. Companies have two options for holding an AGM: (i) convene a virtual AGM pursuant to the temporary measures under the Act, irrespective of their Articles or other statutory provisions, or (ii) convene an AGM and restrict the physical attendees to those required to achieve the quorum.

On July 9, 2020 the Chartered Governance Institute published guidance to assist companies holding shareholder meetings under the Act.⁴⁶ More information can be found in the Q&A published by the UK Department for Business, Energy and Industrial Strategy and the Financial

⁴¹ See: <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm120185>

⁴² See: <https://www.clearygottlieb.com/news-and-insights/publication-listing/corporate-tax-residence-in-the-uk-and-covid19>

⁴³ See: <https://publications.parliament.uk/pa/bills/cbill/58-01/0128/en/20128en.pdf>

⁴⁴ Regulation may expedite or extend this deadline, but not beyond April 5, 2021.

⁴⁵ Regulation may further extend this deadline.

⁴⁶ See: <https://www.icsa.org.uk/about-us/press-office/news-releases/new-guidance-issued-about-shareholder-meetings-under-the-corporate-insolvency-and-governance-act-2020>

Reporting Council on June 8, 2020⁴⁷ and in our memorandum.⁴⁸

B. Operation of English Courts

The English Courts have undertaken to continue their work during the COVID-19 outbreak. Court staff were included in the scope of key workers who are able to continue to send their children to schools despite the general school shutdown effective as of the end of the school day on March 20, 2020. However, the Courts have acknowledged that “it will not be business as usual” and “there will be bumps along the road as [they] get used to new ways of working.” . The Courts have increased their use of telephone, video and other technology to enable as many hearings as possible to be conducted remotely.

On March 19, 2020 the Lord Chief Justice issued a statement⁴⁹ making it clear that the default position is now that hearings should be conducted with one, more than one or all participants attending remotely, whilst noting that attendance of hearings in person may still be necessary in some cases. The Courts have also resolved to deal with many more matters “on paper” rather than by way of a hearing. On April 2, 2020, the Courts and Tribunals Judiciary announced that a ‘New Practice Direction 51ZA – Extension of Time Limits’ had been approved.⁵⁰ The Practice Direction allows parties to agree an extension up to 56 days without formally notifying the court (rather than the previous 28 days) so long as that does not put a hearing date at risk, and also makes certain clarifications of Practice Direction 51Y in relation to audio and video hearings. It takes effect immediately and ceases to have effect on October 30, 2020.

The Courts have generally expected litigants and their lawyers to “roll up their sleeves”⁵¹ and,

consequently, have taken a robust approach to applications for extensions of time. A line of cases has emerged that makes clear the circumstances for getting an extension will need to be specific and well-grounded – while the Courts will take proper account of the difficulties that COVID-19 poses for parties, they won’t provide a general excuse to hold up cases.

The Courts and Tribunals Judiciary have also issued a series of FAQs in relation to the operation of Employment Tribunals during the pandemic.⁵²

On July 1, 2020, Robert Buckland QC MP (Lord Chancellor and Minister for Justice), the Judiciary and HM Courts and Tribunals Service (“HMCTS”) published an update⁵³ on the recovery plans for courts and tribunals in response to the COVID-19 outbreak. The updates revealed that HMCTS is, amongst other things: (i) working with stakeholders to explore options to stagger and extend court and tribunal operating hours, including starting hearings at different times, and weekend sittings, and (ii) introducing measures to make best use of judicial time and to support staff and users. These include supporting judges to list in ways that make full use of space that can safely be employed, and supporting alternative dispute resolution in appropriate cases.

Since June 1, 2020 ‘hybrid hearings’ (in which the judge and some participants are in Court, and some participating remotely) have been able to take place in the Rolls Building Courts in London. This new format of hearing supplements other types of hearing which have been available to litigants throughout the pandemic, namely: (i) fully remote hearings (with the judge at home), (ii) remote hearings (with the judge in their office

⁴⁷ See: <https://www.frc.org.uk/getattachment/e3224310-c39c-4b48-b56b-cc703936beeb/Updated-OA-AGMs-Best-Practice-Final.pdf>

⁴⁸ See: <https://www.clearygottlieb.com/news-and-insights/publication-listing/agms-and-general-meetings>

⁴⁹ See: <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/>

⁵⁰ See: <https://www.judiciary.uk/announcements/118th-practice-direction-update-to-the-civil-procedure-rules-coronavirus-pandemic-related/>

⁵¹ See: paragraph 32(iii) of the judgment in *Municipio De Mariana & Ors v BHP Group Plc* [2020] EWHC 928 (TCC)

⁵² See: <https://www.judiciary.uk/wp-content/uploads/2020/05/FAQ-edition-date-30-April-2020.pdf>

⁵³ See: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-01/HCWS329/> and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896779/HMCTS368_recovery_COVID-19-Overview_of_HMCTS_response_A4L_v3.pdf

or Court in the Rolls Building), and (iii) normal physical hearings, in which all the participants attend Court in person. The decision as to which type of hearing is appropriate in a particular case lies with the judge.

C. Companies House services

Corporates should be aware that, as from March 17, 2020 and until further notice, Companies House has suspended all same day services due to the COVID-19 outbreak.

There are restrictions to public access to the London, Edinburgh and Belfast offices. Any documents that would previously be sent to London must now be sent to Companies House in Cardiff.⁵⁴ Companies House has introduced a temporary service to upload documents online.⁵⁵

On April 16, 2020, Companies House announced that it will temporarily pause the strike off process in an effort to allow businesses affected by the COVID-19 outbreak to update their records and to help them avoid being struck off the register. Companies House will continue to write to companies with overdue filings but will not publish the customary notice of strike off in the Gazette save where (effective from June 1, 2020) it has been concluded following an investigation that the relevant company is no longer in operation (in which case, the registrar will continue with strike off action for such a company).

Companies House have reiterated that if companies do not apply for an extension and their accounts have been filed late, an automatic penalty will be imposed. Appeals to late filing penalties will be treated on a case-by-case basis and appeals based on COVID-19 will be considered under Companies House policies based on unforeseen poor health.

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⁵⁴ See: <https://www.gov.uk/guidance/coronavirus-guidance-for-companies-house-customers-employees-and-suppliers>

⁵⁵ See: https://beta.companieshouse.gov.uk/efs-submission/start?_ga=2.116335620.300031591.1594739227-264965995.1587114758