State Aid – What needs to be considered?

To prevent the distortion of competition and trade within the EU there are restrictions on the amount of financial support that national governments can provide, such as grants and subsidies.

The rules affect any aid that is selective, for example where support is restricted to a geographical region or particular industry sector.

Although the UK has left the EU, it remains subject to state aid regulation until 31 December 2020 as part of the transition agreement.

Breaching the rules can mean that the EU can force governments to reclaim support from businesses and so compliance with the rules is important.

Post 1 January 2021 the government has confirmed that there will be no replacement regime in place immediately after the transition period ends. Instead the provisions within the Trade and Cooperation Agreement (TCA) have been adopted into law pending new regulations.

The TCA rules are less restrictive than the former EU rules, with a greater financial freedom.

However the UK will still be bound by the EU's state aid rules to some extent because of provisions made in the Northern Ireland protocol (as agreed with the EU in January 2020 as part of the Withdrawal Agreement). A further complication to this is the government's UK Internal Market Bill which gives powers for ministers to override the state aid provisions of the protocol.

We are now waiting for a new Subsidy Control Bill, as announced in the Queen's Speech on 11 May 2021.

Limits

Businesses are able to receive targeted state aid, but such aid must be within financial limits of the total government support received.

The EU state aid framework looks at support given over a rolling three-year period, with a de minimis limit of €200,000, but with lower limits for agriculture, the aquaculture and fisheries and road haulage sector.

The UK can grant subsidies of up to about £340,000 under the de minimis threshold within the TCA rules before they are considered likely to have an effect on competition.

Businesses must therefore make sure they do not fall foul of these limits if a repayment of aid is to be avoided.

Coronavirus COVID-19

The EU has granted a new, temporary framework for state aid provided as a result of the COVID-19 pandemic.

This provides a separate state aid threshold for support, being generally €800,000, but it is lower for the agriculture sector (€100,000) and the aquaculture and fisheries sector (€120,000).

This framework is in addition to standard state aid limits, such as those that apply to de minimis state aid.

The COVID-19 threshold is a one-off limit for particular targeted aid measures, intended to be made available over a shorter period of time, with aid being provided by 31 December 2020, although some forms of aid, such as loans, will continue for a period thereafter.

What is State Aid?

State aid is briefly described at: https://www.gov.uk/guidance/state-aid, this links to longer guides https://www.gov.uk/government/publications/state-aid-the-basics and https://www.gov.uk/government/publications/state-aid-manual

Types of government support that are typically covered by the standard state aid rules include:-

- Research & Development tax relief (SME scheme)
- Employment Allowance support for employers - £4k p.a. from April 2020
- Enhanced capital allowances for zero-emission good vehicles
- Business Premises Renovation Allowance (BPRA)
- Enterprise zone allowances
- Reduced rate Climate Change Levy
- Cultural reliefs – such as film, television, theatre and orchestra relief
- The EIS and VCT schemes (note the SEIS and Social Enterprise Schemes are not included at the moment)

What tax reliefs are affected by State Aid?

Examples of state aid that is related to COVID-19 include:-

- Reclaims of employees' coronavirus-related Statutory Sick Pay
- Retail, Hospitality & Leisure Grant Fund (RHLGF)
- Small Business Grant Fund (SBGF) – may affect de minimis state aid
- Coronavirus Bounce Back Loan
- Coronavirus Business Interruption Loan Scheme (CBILS)
- Coronavirus Large Business Interruption Loan Scheme (CLBILS)
- Support for coronavirus related research and development (R&D)
- Innovate UK; Continuity Grants and Loans; Fast start grants
- Support for the construction and upscaling of testing facilities and relevant products to tackle the coronavirus

Businesses should be notified if the support falls under the COVID-19 temporary framework and so is subject to the limits.

For loans it is necessary to quantify the value of government support, as this includes the interest being covered by the government, as well as the value of the guarantees to accredited lenders. HMRC has not yet provided details of the conversion rates that will apply for these benefits, but as the CBILS/CLBILS relief is capped it is unlikely that these loan schemes will breach the COVID-19 threshold on their own, but may need to be considered in conjunction with other support.

What is not State Aid?

Examples are:-

- Coronavirus Job Retention Scheme (applicable to all companies, so not selective)
- Tax payment deferrals (as they are not selective)
- Business rates relief
- Coronavirus Future Fund

Action

To ensure support does not become repayable and further aid may be blocked it is important to check:-

- Your 3-year rolling average of state aid received and ensure it does not breach the de minimis limit of €200,000 or around £340,000 from January 2021.
- Additional relief received for COVID-19 support does not exceed the separate €800,000 threshold

The onus falls on businesses to ensure that they do not accept grants which would breach state aid limits and so you may be asked to sign declarations that the support to be received will be within the permitted thresholds.

For further advice contact Alan Rolfe – alan.rolfe@hwb-accountants.com or call 023 8046 1235.

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