

A GUIDE TO BUSINESS RATES IN EXCEPTIONAL TIMES

The business rates landscape has changed dramatically as a result of the Covid19 outbreak. There are many inaccuracies in the press and this guide is designed to provide some clarity of the current position.

Roberts Vain Wilshaw are Chartered Surveyors who specialise in business rates, minimising liability through reducing Rateable Values and obtaining Reliefs and Exemptions.

Dealing with every scenario in this document is impossible. Business Rates is a complex subject that's rapidly evolving. Get advice directly from the experts

**GET ADVICE TAILORED
TO YOUR BUSINESS**

ADVICE LINE: 01925 205060
Richard Roberts: 07881 503540 richard.roberts@rvwcs.co.uk
Paul Roberts: 07562 746334 paul.roberts@rvwcs.co.uk
Joseph Wilshaw: 07917 647213 joseph.wilshaw@rvwcs.co.uk

Our advice is divided into two categories. Direct measures introduced as a result of Covid19 and whether Rateable Values & liability can be reduced as a direct result of the outbreak.

PART 1 – EXPANDED RETAIL DISCOUNT

The Government have used the Retail Discount mechanism to deliver the bulk of their assistance so it's at the forefront of our explanation. There are nuances between the schemes in England, Wales & Scotland.

ENGLAND

The original Retail Discount scheme applied to qualifying retail premises with a Rateable Value of under £51,000. It gave 33% off their 2019/20 rates bill and originally 50% off for 2020/21. Relief was classed as de-minimis state aid and capped at €200,000/£170,000 over a rolling three-year period.

Retail Discount was subject to a major overhaul as a result of the pandemic with the introduction of **Expanded Retail Discount 2020/21: Coronavirus Response**. Following government announcements on 23rd March to limit the spread of coronavirus some of the original exclusions from the relief have been removed.

They key changes are -

- Retail Discount extended to cover leisure & hospitality uses as well as retail.
- Discount increased from 50% to 100% for 2020/21 on **Qualifying Properties only**
- £51,000 Rateable Value Cap removed
- State aid cap of €200,000 abolished. The Government have advised councils to apply the discount without reference to any state aid cap.

What are Qualifying Properties?

- a. Shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
- b. for assembly and leisure; or
- c. as hotels, guest & boarding premises and self-catering accommodation

Under the latest guidance employment agencies, estate agents, letting agents, betting shops and cinemas are now included.

Are all properties with an RV under £51,000 now exempt from 2020/21 business rates? No, they are not - This is one of the main inaccuracies that has been widely reported in the press, leading to many businesses thinking they will automatically receive 100% relief.

The definition of what constitutes retail under the Expanded Retail Discount scheme are the same as the original scheme. Properties that weren't automatically considered as retail under the original guidance still won't receive the relief.

Properties that have closed temporarily still receive this relief. There is an important distinction between temporary closures as a result of coronavirus and those that have closed permanently. Expanded Retail Discount specifically doesn't apply to empty properties, so this clause allows businesses experiencing short term closures to still receive relief.

The Government advise that Expanded Retail Discount will be automatically applied where they believe that a business meets the criteria.

In real terms, if occupiers have an obvious retail, hospitality or leisure description then Expanded Retail Discount will be automatically applied. Properties without an obvious retail, hospitality or leisure use will not automatically receive relief.

We recognise that there are many uses that sit in grey areas on the periphery of the guidance. We have successfully extended the interpretation of the original scheme to cover a wide range of occupier types whose use is not obviously retail and they now benefit from these substantial additional measures.

ENGLAND - ADDITIONAL GRANT ASSISTANCE

Under the Small Business Grant Fund (SBGF) all businesses in England in receipt of Small Business Rates Relief (SBRR) will automatically receive a payment of £10,000. SBRR applies to companies which have a single site with a Rateable Value of £15,000 or below. Occupiers must have been receiving SBRR on 11 March 2020 to qualify however there are a few exceptions. The guidance makes it clear that manipulation of the system will result in prosecution for fraud.

Eligible properties that don't receive SBRR will be entitled to receive a grant under the Retail, Hospitality and Leisure Business Grants Fund (RHLG). Properties with rateable values of up to and including £15,000, not receiving SBRR will receive £10,000. Properties with rateable values of between £15,001 and £50,999 will receive a grant of £25,000 per property. See the grant assistance section below for more information.

If you are not a recipient of Expanded Retail Discount, then you will not receive the Retail, Hospitality and Leisure Grant.

WALES

The Wales guidance was released 27th March 2020. The scheme wording is very similar to England but as usual there are some nuances. The Welsh government backtracked on their initial announcement and introduced a cap of £500,000 RV. This seems like a badly thought through measure that will cause some large hotels significant issues.

All retail, leisure and hospitality businesses will receive 100% business rates relief for 2020-2021. This has been extended to include estate and letting agents and cinemas. It represents a significant increase over the 2019/20 position where the 'High Street Relief' scheme gave a discount of up to a maximum of £2,500 per property. There are some significant differences between England and Wales, children's play centres for instance won't receive relief in Wales but will in England.

Again, the guidance for what constitutes retail is exactly the same as under the original scheme. The definition of retail hasn't been extended and whilst obvious property descriptions will receive relief automatically, those occupying the many grey areas will not.

WALES - ADDITIONAL GRANT ASSISTANCE

All businesses in Wales who were registered to pay rates on their premises at 20 March 2020 will receive one of two available grants.

Grant 1 - Businesses in the Retail, leisure and hospitality sectors with a Rateable Value between £12,001 and £51,000 will receive a grant of £25,000.

Grant 2 – All businesses that are eligible to receive Small Business Rates Relief (up to £12,000 RV) will receive a grant of £10,000 subject to a maximum of two properties per local authority area.

Business not classed as retail, leisure or hospitality will not receive a grant.

Grant Assistance must be applied via an online portal and will not be granted automatically. The online portal has now been set up. See the section on grant applications below for more information.

**GET ADVICE TAILORED
TO YOUR BUSINESS**

ADVICE LINE: 01925 205060

Richard Roberts: 07881 503540

Paul Roberts: 07562 746334

Joseph Wilshaw: 07917 647213

richard.roberts@rvwcs.co.uk

paul.roberts@rvwcs.co.uk

joseph.wilshaw@rvwcs.co.uk

SCOTLAND

The Scottish Government have introduced The Non-Domestic Rates (Coronavirus Reliefs)(Scotland) Regulations 2020. This introduces two reliefs;- a general reduction in liability of 1.6% (effectively reversing the 2020/21 multiplier increase) for all non-domestic properties. This will be applied to bills automatically by local councils.

The Scottish guidance goes further than in England & Wales by listing which retail, hospitality and leisure businesses would have their 2020/21 liability reduced to nil. The list is extensive but not all encompassing and there will remain grey areas as to whether specific uses will apply. We would urge clients with properties in Scotland who do not automatically receive relief to speak with us as soon as possible.

SCOTLAND GRANT ASSISTANCE

Retail, hospitality and leisure businesses with a rateable value between £18,001 and £51,000 will be able to apply for a one-off grant of £25,000. A one-off £10,000 grant will be available to small businesses who receive Small Business Bonus Scheme relief and Rural Relief but has also been extended to nurseries and a number of other specific schemes.

OBTAINING RETAIL DISCOUNT

If your business sells goods to visiting members of the general public then there is potential to argue that it should be classed as retail for the purposes of this relief. The application needs careful consideration to avoid unforeseen increases in Rateable Value and supporting evidence to improve the chances of success.

There will also be instances where businesses in the leisure and hospitality industry don't automatically receive the package of measures. We have a comprehensive understanding of the appropriate legislation and an extensive track record of success even where retail discount applications have initially been refused on retail properties. We are therefore ideally placed to deal with similar arguments in the leisure and hospitality industry.

THE BENEFITS ARE OBVIOUS – REDUCED LIABILITY AND ADDITIONAL GRANT ASSISTANCE ON PROPERTIES UNDER £51K RV.

GRANT APPLICATIONS

Despite initial suggestions that grants would automatically allocated the vast majority of local authorities have introduced an online grant application process. There is the usual lack of consistency across local councils.

The governments of Wales & Scotland have dedicated portals through which you can select the appropriate council and complete the application process.

<https://www.mygov.scot/non-domestic-rates-coronavirus/>

<https://businesswales.gov.wales/covid-19-grants>

England haven't followed suit and there isn't currently a central portal from which to apply for a grant. You must therefore identify the relevant page on each BA's website – its not always obvious where to start the application process.

GRANT ASSISTANCE & STATE AID CAP - €800,000/£700,000

2020/21 Expanded Retail Discount is no longer considered as De-Minimis State Aid and will not therefore be subject to a cap. However, 2019/20 Retail Discount will count towards the €800,000 (circa £700,000) limit over a rolling three year period.

As part of the application process you may be asked to sign a declaration or summarise the state aid you have received to date. Where we have made 2019/20 Retail Discount applications on your behalf then we can provide you with this figure.

We recognize that the Grant application process, whilst not complex, can be time consuming. We can provide a cost-effective solution making the applications and dealing with any queries whilst ensuring that you're within the state aid limits.

**GET ADVICE TAILORED
TO YOUR BUSINESS**

ADVICE LINE:

01925 205060

Richard Roberts:

07881 503540

richard.roberts@rvwcs.co.uk

Paul Roberts:

07562 746334

paul.roberts@rvwcs.co.uk

Joseph Wilshaw:

07917 647213

joseph.wilshaw@rvwcs.co.uk

PART 2 – APPEALS AND OTHER MEASURES

Are there grounds to appeal against rateable values as a result of the outbreak? There is a raft of case law surrounding this, but the changes need to be physically manifest for there to be a Material Change in Circumstances (MCC) and there needs to be a clear effective date to adopt. The Foot and Mouth epidemic in 2000 produced savings where properties were affected by forced closure but where arguments were made on purely economic grounds assessments were unaffected. Each case needs to be considered on its individual merits, but the argument must be specific to the property rather than the business itself as business rates assumes any building to be vacant and to let. If the value of that building is affected from a specific date, then there is scope.

The financial performance of a specific occupier is not however relevant, and this has been supported in recent caselaw following the relegation of Wigan Football Club and also relating to loss of income by Merlin Entertainment Group, the owners of Alton Towers.

For an appeal to be successful we would need to be able to demonstrate that there is a physical change to the premises or the physical state of the locality in which the property is situated, or which are nonetheless physically manifest there. As the Government position evolves then the opportunities will become clearer and we will keep our clients informed.

As of 2pm on 21st March 2020 closures of certain properties are enforceable by law and without getting into the detail of the legislation, if properties are no longer capable of being used in the manner to which they are intended then there should be grounds for appeal.

We are liaising with the wider profession to consider a coordinated and appropriate response to the impact of Rateable Values and whether mass appeals are appropriate however as always, its essential to consider each case on its individual merits.

PART VACANT SPACE

If you have part vacant or under-utilised areas, then please call us to discuss an appropriate strategy. The Local Government Finance Act 1988 contains a provision for relief to be claimed on part vacant properties and we've successfully achieved this on all manner of properties in the past. It's essential that the vacant area is clearly defined and whilst the councils stance on these circumstances have hardened in recent years, we expect there to be some relaxation under the current circumstances.

SITE CLOSURES

If you have closed entire sites, then there could be scope to claim empty rates which would produce a statutory void period of up to 6 months depending on property type. This will be a contentious issue. Whilst there have been widespread claims that empty rates should apply in instances where a company has closed the doors in favour of home working it isn't a clear-cut answer. Is a property really empty if all goods and equipment remain? Some councils have already relaxed their normal stance but there will be widespread inconsistency.

The case law on both part empty and empty space doesn't support a definitive answer and these are unprecedented times – our advice is to treat each separate case on its merits and take a firm stance with BA's. The key is to make any applications asap and assess the responses. There may be potential to extend the initial statutory void period under certain circumstances. This type of relief is discretionary, and we have asked each of the 352 Council's in England and Wales to confirm their position.

HARDSHIP

Councils have always had the powers to grant relief where a business is suffering hardship, but applications have rarely been successfully in the past. We do however expect there to be some softening of the position in coming months, but each council will take a different position and each case will need to be treated on its individual merits.

PART 3 – VACANT PROPERTIES

There haven't been any measures specifically aimed at ratepayers of vacant properties. Retail Discount only applies to occupied sites across the country so vacant retail, leisure or hospitality sites will pay full rates after the initial statutory void period, even though an identical occupied building would receive full relief.

We expect to see some new retail biased temporary occupation schemes springing up in coming months but would urge clients to make use of the successful schemes out there. We have a number of partners that we work with and can advise on an appropriate solution.

In the meantime, our position on Empty Rates remains the same – a bespoke strategy for each building is required which could include a mixture of appeals, deferment and mitigation strategies to fit the appropriate circumstances.

COVID 19 - PROPERTY ACTION PLAN – click [here](#) for more details

1. MINIMISE BUSINESS RATES

The measures outlined above summarise what we can do to reduce your business rates liability in the short term. Where these don't apply then please speak to us for a bespoke strategy. Many councils will agree revised business rates payment plans and payment holidays.

2. MINIMISE RENT

Many occupiers decided not to pay rent on the March 2020 quarter day but landlords are still chasing payment. Non-payment will ultimately lead to enforcement action and whilst the government have put a halt on evictions for three months, non-payment of rent causes conflict, will potentially incur costs and could prevent lease breaks being exercised.

Whether you occupy a property portfolio or individual property then there is scope to re-gear the lease or agree a rent holiday to be repaid at a later date. We have a number of cost effective tactics to improve your cash flow through these difficult times. Starting these discussions early is strongly advised. It's worth bearing in mind that some landlords are actively engaging in discussions but agreeing inflated rents and other measures which we believe are excessively one sided.

3. BEWARE OF FORTHCOMING BREAKS AND LEASE EXPIRIES

Where you have lease expiries or breaks coming up then consider that timescales for assessment of and undertaking works will now take much longer as a result of working restrictions due to social distancing. Further lockdown measures could restrict the ability to get works done in time. Our building surveyors are still inspecting but get in touch now to discuss an appropriate strategy.

4. OTHER CONSIDERATIONS

Check your insurance requirements on empty sites, many insurers have standard 30 days maximum empty periods.

Changes to prevent evictions for the non-payment of rent have had unintended consequences and squatters and travellers now benefit from the extended protection.

**GET ADVICE TAILORED
TO YOUR BUSINESS**

ADVICE LINE:	01925 205060	
Richard Roberts:	07881 503540	richard.roberts@rvwcs.co.uk
Paul Roberts:	07562 746334	paul.roberts@rvwcs.co.uk
Joseph Wilshaw:	07917 647213	joseph.wilshaw@rvwcs.co.uk

www.rvwcs.co.uk

• Expert Advice • Traditional Values • Innovative Technology •