

The UK Government has announced a number of measures to help with businesses' immediate cash flow needs such as:

- Grants to cover 80% of PAYE employees' salary up to £2,500 p/m between 1 March and 1 June
- Loan schemes to help business get access to borrowing through:
 - loans from various lenders - the Business Interruption Loan Scheme
 - helping businesses issue Commercial Paper through the Covid Commercial Financing Facility which will be bought on the market by a Government Fund. This is designed for large companies and is an involved process which won't be accessible to most businesses

At the moment it still looks like both of these loan schemes will not be available to leveraged PE portcos.

- Deferral of VAT between 20 March and 30 June until April 2021. Deferral of self assessment income tax payments. No deferral of PAYE payments.
- Business rates relief for certain business sites

Some businesses and their directors will still be facing wrongful trading and insolvency issues. At the moment the UK Government has not temporarily relaxed the insolvency laws or filing obligations as other countries, such as Germany and Spain, have done.

We are still waiting detailed guidance and legislation on the measures but the key points are set out below.

SALARY GRANTS

The UK Government will make grants to UK businesses to cover 80% of PAYE employees' salaries between 1 March and 1 June 2020. Only employees paid through PAYE are covered – so not contractors or other workers.

The grant is capped at £2,500 a month for each employee and the employee must be furloughed because of COVID-19. So asked by their employer not to work - rather than being on sick leave. The scheme appears to be one of the most generous in Europe but we wait to see the details.

What is a "UK business" is not yet known – but the criteria for qualifying for the loans is fairly wide and captures more than just domestic businesses. There are also no details on whether the £2,500 is gross or net of PAYE (but we are presuming that payment of £2,500 to the employee is covered) or who pays the employer's NICs on the total salary paid.

Businesses have to designate their employees as "furloughed" and notify them of this change. Furloughing may well breach certain employees' employment contracts.

Businesses must report details of these furloughed employees and their salaries to HMRC who will pay the grants. The system is expected to be up and running by end of April but past experience has shown that HMRC's systems are not geared up to pay out money – rather than receiving it in. So there may be delays in this cash reaching businesses.

BUSINESS INTERRUPTION LOAN SCHEME (BIL)

The British Business Bank will support finance through certain banks/lenders on (apparently) more attractive terms than usually available. The Government will guarantee 80% of the loan – but obviously repayment of the whole loan still remains the business' liability. Loans will be available from 23 March

This is not new money from the Government – it is just encouraging banks to provide more borrowings. But the loans will be guaranteed by the Government to help the lending get approved. The Government believes the lending will be on more favourable terms but businesses should still expect that a commercial rate of interest will be charged and have to be repaid on the money.

The Government will cover first 12 months of interest payments – to help cash flow. We wait to see if the borrower will ultimately have to repay that interest to the Government.

Up to £5million can be borrowed through the scheme. Different types of financing is available – term loans, asset backed financing, invoice discounting etc. The loans can last for between 3 and 10 years - depending on the type of debt.

This loan is to primarily benefit SMEs – although the Chancellor said tonight it would also help larger companies. If the Government sticks to the tax definition of an “SME” it will not be available to PE funds' portcos. The business needs to:

- be UK based
- have no more than £45m turnover a year
- have less than 250 employees
- not operate in an ineligible sector – like insurance or schools
- not had more than £200k of state aid in last two financial years

There are other factors – we wait to see the full legislation.

COMMERCIAL FINANCING FACILITY (CFF)

Commercial Paper (“CP”) is a debt security issued by a company (a bit like a bond) which usually has simpler terms & conditions than typical finance facilities. The CP will trade through Euroclear and Clearstream.

The CP will mature after 1 year. You can roll drawings while the CFF is open if you are still eligible. The CP won't accrue interest but will be issued at a discount to its face value. At least £1million of CP must be issued by a company – so this is only for the largest companies.

Companies can access the CFF if they make a “material contribution to economic activities in the UK”. The Bank of England will determine if companies meet this but the following are expected to be eligible:

- UK incorporated companies with genuine business in the UK – even if they have a foreign parent.
- Companies with significant employment in the UK
- Companies with UK headquarters

It looks like that it will be enough if subsidiaries of the company issuing the CP meet this criteria – but not yet clear. If you (i) generate significant revenues in the UK; or (ii) serve a large number of UK customers; or (iii) have a number of operating sites in the UK - you may still qualify. All very subjective - hopefully will be clarified on Monday.

Leveraged investment vehicles will not qualify. We are expecting that the Government will not include PE portcos as investment vehicles – but will distinguish between the fund and the operating companies.

The biggest block for businesses in using this facility is the “investment grade rating requirement”. Only the largest businesses will have these ratings. If a business does not have a rating, the Bank will decide if the business has “equivalent financial strength”. It looks like most leveraged portcos will not have these ratings or be able to demonstrate such financial strength. Industry bodies are trying to get this criteria relaxed but as the Bank of England is a Central Bank which usually only buys investment grade paper, we are not sure the Bank can.

It looks like subordination of the CP is not allowed. There are no details on this yet - e.g. whether this just prohibits contractual subordination behind prior ranking secured debt). It may be possible to borrow through a holding company outside your secured banking net but the need for a parental guarantee may prevent that. Also if you have financing facilities already that are secured against your assets you will probably need your current lenders permission to borrow through this scheme. We think the Bank will also struggle administratively to approve you as a borrower if you have complex financial facilities with cross guarantees and intercreditors etc.

The scheme favours businesses who already issue debt securities in this way and have the processes and systems set up to trade them on the market. If you do not have this (and most businesses do not) a lot of time and expense will go into setting this up. You will need to appoint dealers and process agents etc.

VAT DEFERRAL

Payment of VAT between 20 March and 30 June 2020 will be deferred until end of 20/21 tax year – so 5 April 2021. This seems to apply to VAT payments due during this period – not VAT collected in this period but due to be paid over after 30 June 2020. Details are awaited.

Business do not need to do anything to benefit from this. They just do not pay the VAT when due. Businesses should think about the timing of issuing invoices in order to maximise this benefit.

INCOME TAX DEFERRAL

Income tax self assessment payments for self-employed people due on 31 July 2020 are deferred until 31 January 2021. For those of us who care, it is not clear if this applies to partners and members of LLPs.....

SMEs RECLAIM OF SSP

Businesses can reclaim 2 weeks statutory sick pay paid for employees off sick because of COVID-19. GP sick notes are not needed.

Only UK based business which are SMEs are eligible for this and the business must have less than 250 employees as at 28 February 2020. So we believe this will not apply to portcos of PE funds.

This only applies to statutory pay paid after the regulations come into force – not since COVID-19 started.

It will be a rebate from the Government – timing to be confirmed. So there will be a delay on businesses feeling this in their cash flow.

OTHER FINANCIAL SUPPORT

- **Business rate relief for retail, hospitality and leisure business in England only for 2020-2021**

This is an extension of the existing relief and applies regardless of rateable value. But it only covers properties which are (i) occupied; and (ii) being used wholly or mainly as shops, restaurants, cafes, drinking establishments, cinemas, live music venues, for assembly or leisure or as hotels or accommodation. So it does not cover a group's offices, warehouses etc.

As many sites shut down, businesses are trying to establish if they will still qualify for this relief if they are not in occupation of a site for 30+ days.

- **£25k grant to retail, hospitality and leisure businesses operating from a premises with a rateable value of between £15k and £51k.**

We are waiting to see if rateable values of all properties in a business' corporate group are aggregated for this test. We suspect they will be and therefore it will only apply to smallest businesses.

- **Support in paying tax bills**

This is nothing new – just a suggestion that HMRC may be more supportive of non-payment because of financial distress due to COVID-19. Many small businesses are already stating that they will not pay their next VAT instalment or corporation tax payment in any event.