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Client Alert Commentary

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COVID-19: Key UK Business Measures – Current State of Play

An up-to-date summary of key COVID-19 related measures announced by the UK government as of 3 May 2020.

Key Points:

- In a series of announcements starting with the budget on 11 March 2020, the UK government has outlined significant measures to support British business and workers on an unprecedented scale.
- Key announcements include the Job Retention Scheme, the Self-employment Income Support Scheme, the COVID-19 Corporate Financing Facility, the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme, the Future Fund, the Bounce Back Loans Scheme, the Retail and Hospitality Grant Scheme, business rates holidays, statutory sick pay relief, and certain tax deferrals.
- Some elements of business support are devolved, meaning that the measures businesses can access may differ in Scotland, Wales, and Northern Ireland.

As governments continue to address the spread of COVID-19, it is increasingly clear that the worldwide "social distancing" initiatives and government "lock-downs" present economic challenges of a like not seen in recent memory. With the expectation that these measures could be in place for a number of months, governments around the globe have introduced extensive fiscal policies to alleviate some of the economic pressure. The UK government, for its part, has announced a series of measures on a scale which would have been unthinkable for many within the Conservative government as recently as the December 2019 general election.

This *Client Alert* provides an up-to-date summary of the key UK business measures already announced. The speed at which the government is acting means that the details of some measures are still developing and it remains possible that further announcements could be made in due course.

Government-Backed Lending

- **COVID-19 Corporate Financing Facility** – A short-term lending facility operated through the Bank of England will help support liquidity among larger firms, which make a material contribution to the UK economy. The scheme operates through a Bank of England backed fund (the COVID-19 Corporate Financing Facility Limited) purchasing sterling denominated commercial paper of up to one year maturity (issued via a bank) in the primary market via dealers and in the secondary market from eligible counterparties, at a minimum spread over reference rates based on the sterling overnight index swap rate. Spreads will be set such that pricing is close to the market spreads prevailing before the economic shock from COVID-19. The scheme is open to firms that can demonstrate that they were in sound financial health prior to the impact of COVID-19 (generally those that as of 1 March 2020 had a rating of investment grade or financial strength equivalent to an investment grade rating). The minimum size of an individual security that the Bank of England backed fund will purchase from an individual issuer is £1 million nominal value.

  Purchases of commercial paper may be limited by issuer. Any such limits will be made available, on request, to the issuer but as a general guide, the initial issuer limit is expected to be up to £1 billion for an issuer with a rating (or equivalence to rating) of A1/P1/F1/R1. Commercial paper issued by leveraged investment vehicles or from companies within groups that are predominantly banks, investment banks, insurance companies, or building societies will not be eligible. The Bank of England backed fund will accept commercial paper with standard features that is issued using ICMA market standard documentation and to support companies in seeking funding quickly, the Bank of England has made standard form documentation available on its website. Commercial paper with any non-standard features (*e.g.,* subordination or extendibility) will not be accepted under the scheme.

  Although debt incurred under the scheme is intended to be unsecured, if there is secured debt in the issuer's capital structure, the commercial paper would need to be guaranteed and secured on the same basis to ensure it is pari passu. In secured capital structures, a borrower's ability to incur additional secured commercial paper on a pari passu basis will depend on its additional debt incurrence and permitted lien capacity, and may need the other secured lenders' consent if there is insufficient existing capacity. Companies who wish to use the scheme are not required to have issued commercial paper before. Issuers' names will not be made public and companies that participate in the facility will be required to sign a confidentiality agreement with the Bank of England. The scheme has been available for applications since 23 March 2020, and is expected to be open for at least 12 months.

- **Coronavirus Business Interruption Loan Scheme** – Following widespread criticism of its original implementation, the terms of this scheme were overhauled by the UK government on 2 April 2020. The scheme delivered by the British Business Bank (through more than 50 accredited lenders listed on the British Business Bank website), allows businesses with a turnover of up to £45 million (on a consolidated group basis) and that meet the other British Business Bank eligibility criteria to access bank lending, overdrafts, invoice finance, and asset finance of up to £5 million. Finance terms are up to six years for term loans and asset finance. For overdrafts and invoice finance facilities, terms will be up to three years. The government will cover the first 12 months of interest payments and any lender-levied fees. The government will also provide lenders with a guarantee of 80% on each loan for no fee on the borrower (subject to a per-lender cap on claims). Lenders will be required to pay a fee to access the scheme. The borrower remains 100% liable for the debt.

To be eligible for the scheme:

- The business must be UK-based in its business activity with annual turnover of no more than £45 million.
- The company's business must generate more than 50% of its turnover from trading activity.
- The business must have a borrowing proposal that, were it not for COVID-19, would be considered viable by the lender, and for which the lender believes the provision of finance will enable the business to trade out of any short-to-medium term difficulty.
- The business must demonstrate that the facility will be used to support primarily trading in the UK.
- The business must self-certify that it has been adversely impacted by COVID-19.
- The business must not have been classed as a "business in difficulty" on 31 December 2019 if applying to borrow £30,000 or more.

Insurers (but not insurance brokers), re-insurers, banks, building societies, and public sector organisations will not be eligible. The British Business Bank's guidance confirms that a business with a private equity investor may still be eligible for the scheme, even if that investor holds a majority or controlling stake. When considering the £45m turnover threshold, the business will be considered separately to the private equity investor, and its other investments.

Decision making on whether a business is eligible and whether any security is required is at the discretion of the lenders. Following the changes announced on 2 April 2020, lenders will not take personal guarantees of any form for facilities below £250,000. For facilities above £250,000, personal guarantees may be required, at a lender's discretion, but:

- They must exclude the principal private residence of the guarantor
- The recoveries under these guarantees are capped at a maximum of 20% of the outstanding balance of the facility, after the proceeds of business assets have been applied.

A further key change announced on 2 April 2020 is that a borrower having insufficient security for a normal commercial loan is no longer a condition to access the scheme, thereby opening up the scheme to smaller businesses that would have previously met the requirements for a commercial facility but would not have been eligible for this scheme. If there is sufficient security available, the lender will likely take such security in support of the scheme facility. All major banks are reportedly offering this scheme, and businesses are encouraged to approach their bank directly to discuss it. Businesses that were denied the facility before 2 April 2020 are encouraged to re-contact their lender in light of the revised terms.

The discretion offered to banks under the scheme means that banks are said to be taking different approaches in terms of their requests for guarantees and security, meaning a degree of shopping around may be required to find the best terms. This scheme has been in place since 23 March 2020 and will initially run for six months.

- **Coronavirus Large Business Interruption Loan Scheme** – This scheme expands the scope of the Coronavirus Business Interruption Loan Scheme, ensuring that more businesses are able to benefit from government-backed support that would have not received it under the COVID-19 Corporate Financing Facility. The scheme will provide a government guarantee of 80% in a similar way to the Coronavirus Business Interruption Loan Scheme, to enable banks to make loans of up to £25 million to firms with a group annual turnover of between £45 million and £250 million, and loans of up to £50 million to firms with a group annual turnover of over £250 million. Generally the amount borrowed should not be greater than (i) double the annual wage bill for the most recent year available, or (ii) 25% of the total turnover for the most recent year available. With appropriate justification and based on self-certification of the business, the amount may be increased to cover liquidity needs for the next 12 months. As for the Coronavirus Business Interruption Loan Scheme the borrower remains 100% liable for the repayment of the debt. In contrast with the Coronavirus Business Interruption Loan Scheme, business interruption payments will not be made by the government to cover any interest or any lender-levied fees in the first 12 months of the Coronavirus Large Business Interruption Loan Scheme. The 80% guarantee will, however, cover interest and fees as well as principle. The available facilities will include term loans, revolving credit facilities, overdrafts, invoice finance, and asset finance, for terms of up to three years for all facilities.

  In addition to falling within the turnover thresholds the business must:

  - Be UK-based in its business activity
  - Have a borrowing proposal that the lender would consider viable were it not for the COVID-19 pandemic, and which the lender believes will enable the business to trade out of any short-term to medium-term difficulty
  - Self-certify that it has been adversely impacted by COVID-19

  Lenders making use of the scheme will pay a small fee in order to benefit from the government guarantee, which will vary according to the length of the facility. Insurers (but not insurance brokers), re-insurers, credit institutions (falling within the remit of the Bank Recovery and Resolution Directive), building societies, and public sector organisations will not be eligible. Businesses that have utilised the COVID-19 Corporate Financing Facility will also not be eligible for the Coronavirus Large Business Interruption Loan Scheme. No personal guarantees are permitted for facilities under £250,000. For facilities of £250,000 and over, claims on personal guarantees cannot exceed 20% of losses after all other recoveries have been applied. Loans backed by a guarantee under the scheme will be offered at commercial rates of interest. The scheme will be delivered through accredited lenders (around 10 lenders are currently included in the scheme) and businesses should approach lenders directly.

- **Future Fund** – This scheme will issue convertible loans of between £125,000 and £5 million to innovative UK-based companies that are facing financial difficulties due to COVID-19, subject to at least equal match funding from private investors. The government will initially make up to £250 million available in total for the scheme, though the government will keep this amount under review. To be eligible for the scheme the business must:

  - Be based in the UK
  - Be an unlisted UK registered company

- Attract the equivalent match funding from third-party private investors and institutions

- Have previously raised at least £250,000 in equity investment from third-party investors in the last five years.

If the company is a member of a group, only the ultimate parent company, if UK incorporated, will be eligible. The loan will carry a minimum rate of interest of 8% per annum (non-compounding), though this may be higher if a higher rate is agreed with the matched investors. The loan will mature after a maximum of 36 months. The loan can only be used by the business for working capital purposes and not to repay borrowings, make any dividends, pay staff bonus payments or to pay any advisory or placement fees or bonuses to external advisors in respect of the government loan. The loan will automatically convert into equity on the company's next qualifying funding round at a minimum conversion discount of 20% (or higher if a higher rate is agreed with the matched investors) to the price set by that funding round (the Discount Rate), with a company repayment right in respect of the accrued interest. On a sale or IPO, the loan will either convert into equity at the Discount Rate to the price set by the most recent non-qualifying funding round (assuming there was one since the Future Fund loan was made) or it shall be repaid with a redemption premium (being a premium equal to 100% of the principal of the loan), whichever will provide the higher amount.

On maturity of the loan, the loan shall, at the option of the holders of a majority of the principal amount held by the matched investors (i) be repaid by the company with a redemption premium (being a premium equal to 100% of the principal of the loan); or (ii) convert into equity at the Discount Rate to the price set by the most recent funding round, provided that the government's loan shall convert unless it requests repayment in respect of its loan. On conversion of the loan, only the principal shall covert at the Discount Rate and any accrued interest not repaid shall convert at the relevant price without the Discount Rate. The loan shall convert into the most senior class of shares in the company.

The government will have limited corporate governance rights during the term of the loan and expect to be provided with a limited set of warranties and undertakings. The company will not be permitted to create any indebtedness that is senior to the loan, other than bona fide senior indebtedness from a person that is not an existing shareholder or matched investor. The government will be permitted to transfer its loans and/or shares without restriction to an institutional investor which is acquiring a portfolio of the government's interest in at least 10 companies owned in respect of the Future Fund. The scheme will be delivered through the British Business Bank and is expected to launch in May 2020. The scheme will initially be open until the end of September 2020.

- **Bounce Back Loans Scheme** – On 27 April 2020 the Chancellor announced to the House of Commons that small businesses will be given access to 100% taxpayer-backed loans of up to £50,000. Businesses will be able to borrow between £2,000 and £50,000, up to the value of 25% of their turnover. The loan terms will be such that no capital or interest repayments will be due for one year, with the government paying the interest and loan fees for the first 12 months. Loan terms will be up to six years but early repayment is allowed without early repayment fees. The government will guarantee 100% of the loan and the interest rate for the facility is set at 2.5%. The borrower remains 100% liable for the debt. To be eligible for the loans the business must:

  - Be based in the UK

  - Have been negatively affected by COVID-19

- Not have been an “undertaking in difficulty” on 31 December 2019

Lenders are not permitted to take personal guarantees or take recovery action over a borrower’s personal assets. There is no fee to access the scheme for either businesses or lenders. Banks, insurers, reinsurers (but not insurance brokers), public sector bodies, and state-funded schools will not be eligible to apply. Businesses also cannot apply if they have already been granted a loan under the Coronavirus Business Interruption Loan Scheme. However, businesses that have already received a loan of up to £50,000 under the Coronavirus Business Interruption Loan Scheme can arrange with their lender for the loan to be transferred to the Bounce Back Loans Scheme at any time before 4 November 2020. The scheme is open for applications from Monday 4 May 2020 and businesses will be able to access the loans through a network of accredited lenders.

Retention of Employment

- **Job Retention Scheme** – Government grants (by way of a reimbursement from HMRC) will cover 80% of the regular salary (including past overtime, fees, and compulsory commission payments, but excluding discretionary commissions and bonuses and non-cash payments) of retained workers that would otherwise have been laid off, up to a total of £2,500 a month (plus the associated employer national insurance contributions and minimum automatic enrolment employer pension contributions). Employers will be permitted to “top-up” employees’ wages to 100% but are under no obligation to do so. This is a temporary scheme, open to any employer in the UK with a PAYE scheme in place on or before 19 March 2020, that has enrolled for PAYE online and that has a UK bank account. The scheme is now live and will cover the cost of wages backdated to 1 March 2020 and is currently intended to be open for at least four months.

  This scheme applies to employees who have been asked to stop working but who are being kept on the payroll (described as “furloughed workers”). To be eligible for the grant whilst on furlough, an employee cannot undertake work for, or on behalf of, the employer or any linked or associated enterprise. The scheme will be available to employees whether full-time, part-time, on agency contracts, on fixed term contracts, or on flexible or zero-hours contracts, provided they were on the PAYE payroll on or before 19 March 2020 (which effectively means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before that date). The scheme will cover employees that have been made redundant or stopped working for the employer since 28 February 2020, provided they are re-hired by the employer (even if re-employed after 19 March 2020). Foreign nationals are eligible to be furloughed. Furloughed employees who are not undertaking compulsory training can be paid 80% of their salary even if this would be below the appropriate minimum wage. Office holders and company directors can be furloughed but the furlough arrangements should be adopted formally as a decision of the company and noted in the company’s records. If furloughed directors need to carry out particular duties to fulfil statutory obligations, they may do so provided they do no more than would reasonably be judged necessary and they should not do work they would carry out in normal circumstances to generate commercial revenue. Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed. However, the employer must pay apprentices at least the Apprenticeship Minimum Wage, National Living Wage, or National Minimum Wage for the time spent training, meaning the employer may need to cover the shortfall between the amount claimed for their wages under the scheme and the appropriate minimum wage. Employees who have different employment with different employers are expected to be able to continue to work for one employer whilst being furloughed by another. An employer can also agree to find furloughed employees new work or volunteering opportunities whist on furlough, if this is in line with public health guidance. A new employer is eligible to claim under the scheme in respect of the employees of a previous business transferred after 19 March 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

Furloughed employees continue to accrue leave as per their employment contract. Employees who are on short-term sick leave should receive statutory sick pay — the Job Retention Scheme is not intended for short-term absences from work due to sickness. Short-term illness or self-isolation should not be a consideration in deciding whether to furlough an employee, but if there are business reasons to furlough an employee currently on sick leave, employers are able to do so (any sick pay should then cease). Employers cannot claim for an employee under both the Job Retention Scheme and Statutory Sick Pay for the same period, but employees can be moved between the two schemes as appropriate. Employees who are shielding in line with public health guidance or on long-term sick leave can be placed on furlough if they are unable to work from home and the employer would otherwise have to make them redundant. Employees who are unable to work because they have caring responsibilities resulting from COVID-19 can be furloughed, *e.g.*, employees that need to look after children can be furloughed. Government guidance suggests that employees on maternity or parental leave cannot be furloughed, but if an employer offers enhanced contractual maternity or parental pay, this can be recovered under the scheme. If a company is being taken under the management of an administrator, the administrator will be able to access the scheme but the UK government expects such access to occur only if there is a reasonable likelihood of rehiring the employees.

To access the scheme, employers will be required both to:

- Designate affected employees as “furloughed workers”, and notify the relevant employees in writing of this change. A record of this notification should be kept for five years. When employers are making decisions in relation to the process, including deciding who to furlough, equality and discrimination laws will apply in the usual way.

- Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal which is now live; claims can only be submitted once every three weeks, which is the minimum period for which an employee can be furloughed. Once a claim has been made, the employer will receive a claim reference number. HMRC will then confirm that the claim is correct and pay the amount due within six working days.

Once a claim has been made, employers should keep copies of all records including:

- The amount claimed and the claim period for each employee

- The claim reference number

- Calculations of the amounts claimed in case HMRC request further information

Employers should also notify the relevant employees that the claim has been made (and that the employees need not take any further action) and should pay the employee his/her wages as agreed.

Claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, or when the notification was sent to the employee. Claims should be made using the amounts in the employer’s payroll and, if appropriate, employees’ wages should be reduced to 80% of their salary within the employer’s payroll before they are paid. For the purposes of the 80% of regular salary calculation, HMRC will look at:

  - For full and part-time employees – Actual salary before tax for their last pay period before 19 March 2020

  - For employees with variable pay – The higher of the same month's earnings from the previous year, and either (a) their average monthly earnings from the 2019/20 tax year (assuming they have been employed for 12 months), or (b) their average monthly earnings since they started employment (if they have been employed for less than 12 months)

  Benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should not be included in the reference salary. HMRC has confirmed that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements. The Apprenticeship Levy and Student Loans should continue to be paid as usual and are not covered by grants from the scheme. Payments received by a business under the scheme must be included as income in the business's calculation of its taxable profits, in accordance with normal principles. Businesses can deduct employment costs as normal when calculating taxable profits. While on furlough, the employee's wage will be subject to usual income tax and other deductions. The government will retain the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims.

- **Self-employment Income Support Scheme** – The scheme will support self-employed individuals (including members of partnerships) who have lost income due to COVID-19. The scheme will allow the self-employed to claim a taxable grant worth 80% of their average profits from the tax years (if applicable) 2016-17, 2017-18, and 2018-19, up to a maximum of £2,500 per month for three months (subject to expansion if necessary). In contrast to the Job Retention Scheme outlined above, individuals are expected to be able to claim this support and continue to trade. They can also start a new trade or take on other employment.

  Individuals are eligible to apply if:

  - They traded in the tax year 2018-19 and have submitted a Self-Assessment tax return for the 2018-19 tax year on or before 23 April 2020.

  - They have traded for the tax year 2019-20.

  - They intend to continue to trade in the tax year 2020-21.

  - They are carrying on a trade that has been adversely affected by COVID-19. A business could be adversely affected by COVID-19, for example, if the individual is unable to work because they are shielding, self-isolating or have caring responsibilities because of COVID-19 or where the individual has had to scale down or temporarily stop trading because they have fewer or no customers, staff are unable to work or their supply chain has been interrupted.

  - Their self-employed trading profits are less than £50,000 and at least half of their income comes from self-employment. These thresholds are determined either based on trading profits and total taxable income in 2018-19 or the average trading profits in 2016-17, 2017-18, and 2018-19 and the average total taxable income in the same period. If the individual started trading between 2016 and 2019, HMRC will use only the years for which a Self-Assessment tax return was submitted.

HMRC will use data on the 2018-19 tax returns already submitted to identify those eligible. Individuals can use an online tool to find out if they are eligible to make a claim. HMRC will pay the grant directly in one installment. The grant will be subject to income tax and national insurance contributions. The scheme is not yet open to applications. HMRC will aim to contact eligible individuals by mid-May and payments are expected to be available from June 2020. Individuals can make a claim for Universal Credit while they wait for the grant. The grant should be recorded as part of the individual's self-employment income, and it may affect the amount of Universal Credit available. HMRC will contact eligible individuals and invite online applications in due course. Note that small business owners that are set up as directors of their own personal company and paid through a combination of minimal salary (subject to PAYE) and dividends are not expected to be eligible for the Self-employment Income Support Scheme; instead, they are expected to be supported through the Job Retention Scheme for 80% of the salary they earn only (excluding dividends), subject to meeting the conditions of that scheme (see above).

- **Statutory sick pay relief for SMEs** – Small and medium-sized businesses (SMEs) based in the UK will be permitted to reclaim statutory sick pay (SSP) for sickness absence due to COVID-19 on or after 13 March 2020. The refund will cover up to two weeks of SSP per eligible employee, and will be available to UK-based employers with fewer than 250 employees and a PAYE payroll scheme, in each case, as of 28 February 2020. The scheme covers all types of employment contracts, including full time employees, part-time employees, agency contracts, and employees on flexible or zero hours contracts. Employers that pay more than the current rate of SSP can only claim the current rate amount. Employers should maintain records of staff absences and payments of SSP. The records an employer must keep should include:

  - The reason why an employee could not work
  - Details of each period when an employee could not work, including start and end dates
  - Details of the SSP qualifying days when an employee could not work
  - National Insurance numbers of all employees who have been paid SSP

  These records should be maintained for at least three years following any claim. Employees will not need to provide a GP fit note, but if evidence is required by an employer, those with symptoms of COVID-19 can get an isolation note from NHS 111 online and those who live with someone that has symptoms can get a note from the NHS website. A claim amount under this scheme should not be above the maximum €800,000 of state aid under the EU Commission temporary framework, when combined with other aid received under the framework. The government will work with employers over the coming months to set up the repayment mechanism as soon as possible.

Grant Schemes

- **Small Business Grant Scheme** – A one-off grant of £10,000 is to be provided by local authorities for all businesses based in England in receipt of small business rate relief or rural rate relief. Businesses do not need to take any action to access the grant; local authorities will write to them if they are eligible.

- **Retail, Hospitality, and Leisure Grant Fund** – A cash grant will be provided for businesses based in England in the retail, hospitality, and leisure sectors in receipt of the Expanded Retail Discount. Businesses with a rateable value of between £15,000 and £51,000 will receive a grant of £25,000 per property. Businesses with a rateable value of under £15,000 will receive a grant of £10,000. Businesses do not need to take any action to access the grant; local authorities will write to them if they are eligible.

Deferral of Tax and Other Measures

- **Deferral of VAT payments** – VAT payments for all UK businesses can be deferred for the period from 20 March 2020 through 30 June 2020 (other than payments for import VAT or the VAT Mini One Stop Shop scheme). Businesses have the option to defer but are not obliged to do so. Businesses can defer:

  - Quarterly and monthly VAT returns' payments for the periods ending in February, March, and April

  - Payments on account due between 20 March 2020 and 30 June 2020. If a business defers a payment on account between 20 March 2020 and 30 June 2020 but the balancing payment is outside of these dates, the amount the business must pay is the balancing payment less any deferred payments

  - Annual accounting advance payments due between 20 March 2020 and 30 June 2020

  The deferral is automatic and no applications are required; businesses simply do not need to make payments and will have until 31 March 2021 to pay any liabilities that have accumulated during the deferral period, without interest or penalties. VAT returns will still need to be submitted to HMRC on time. Businesses that normally pay VAT by direct debit are advised to contact their bank to cancel their direct debit as soon as possible. VAT refunds and reclaims will continue to be paid by the government as normal (usually within five working days). Repayments will not be offset against any deferred VAT, but they will be offset against existing debts. Businesses can apply online to move to monthly returns to improve cash-flow if they are in a VAT repayment position. HMRC's current intention is that its normal debt recovery processes (including discussing "normal" time to pay arrangements, for those who cannot afford to pay) will apply to collecting taxes deferred under these arrangements, at the end of the deferral periods.

- **Deferral of income tax payments for the self-employed** – Income tax self-assessment payments due on 31 July 2020 can be deferred until 31 January 2021. The deferment is optional. This is an automatic offer with no applications required and no penalties or interest will be charged during the deferral period. The self-employed can now also access, in full, Universal Credit at a rate equivalent to statutory sick pay for employees, if they are diagnosed with COVID-19 or required to self-isolate.

- **Business rates holiday** – This scheme is available for all retail, hospitality, leisure, and nursery businesses in England for the 2020-2021 tax year. Eligible businesses do not need to take any action to access this scheme; it should have been applied in their council tax bill issued in April 2020 (though local authorities may need to reissue the bill to exclude business rate charge, which will be done as soon as possible).

- **HMRC Time to Pay** – Businesses in financial distress, and with outstanding tax liabilities, may be eligible to receive support with their tax affairs through HMRC's Time To Pay service. These arrangements are agreed on a case-by-case basis and are tailored to individual circumstances and liabilities. HMRC will discuss the specific circumstances of the business to explore:

- Agreeing an instalment arrangement
- Suspending debt collection proceedings
- Cancelling penalties and interest if the business is having administrative difficulties contacting or paying HMRC.

HMRC has a dedicated helpline at 0800 024 1222 and also a webchat function that is available at https://www.tax.service.gov.uk/ask-hmrc/webchat/payment-problems. The helplines and webchat are available Monday to Friday, 8 a.m. to 4 p.m.

- **Deferral of previously announced off-payroll working reforms (IR35)** – Reforms to the rules for off-payroll work scheduled to take effect on 6 April 2020 will be postponed until 6 April 2021.

- **Corporation tax quarterly installment payments** – Although not a new measure, large corporates may have already paid a significant proportion of their corporation tax for the year under their quarterly payment regimes, which would likely have been based on originally projected higher profits. If the revised profits are now substantially reduced, it is possible to take into account the lower projected profits in the subsequent quarterly payments. If the group has paid too much under the regime, the group can then claim back the overpayment from HMRC.

- **HMRC helpline** – HMRC has set up an online and phone helpline to support businesses and self-employed individuals that are concerned about being unable to pay their tax due to COVID-19. HMRC advises that the best way to contact them is online (https://www.gov.uk/contact-hmrc) but alternatively they can be contacted by phone on 0800 0159 559.

- **Stamp duty** – HMRC has updated its guidance on the processing of stamp duty applications in light of COVID-19. Stock transfer forms must now be submitted electronically by email to stampdutymailbox@hmrc.gov.uk. The stock transfer form must be fully completed, signed, and dated (using a power of attorney if necessary). HMRC will accept e-signatures while COVID-19 measures are in place. Any issues in arranging for a stock transfer form or instrument of transfer to be signed and dated should be communicated to the above email address. No stock transfer forms are currently being stamped by HMRC. Instead, once HMRC has checked the form and confirmed receipt of payment, it will send an email that includes a letter confirming receipt of duty and providing assurance that no penalties will be pursued against the Registrar for registering the new ownership of the shares. This letter and the stock transfer form should both be sent to the Registrar.

- **Non-statutory clearance** – HMRC is not accepting non-statutory clearance applications by post due to COVID-19. Applications for clearance should be submitted by email.

- **Protection from eviction for commercial tenants** – Commercial tenants in England, Wales, and Northern Ireland who cannot pay their rent because of COVID-19 will be protected from eviction. The measures mean that no business will automatically forfeit their lease and be forced out of their premises if they miss a payment up until 30 June 2020. The government can extend this period if needed. All commercial tenants will still be liable for the rent; this is not a rental holiday.

- **Extension of Companies House filing deadline** – Businesses affected by COVID-19 can apply for a three-month extension to file their accounts with Companies House. Applications can be made through a fast-tracked online system. The UK government has stated that applications citing issues around COVID-19 or health matters will be “automatically and immediately” granted an extension.

- **Insolvency laws and HMRC practice** – On 28 March 2020, the UK government announced new insolvency measures to support companies under pressure as a result of the COVID-19 outbreak. The new measures are designed to give companies breathing space and allow them to keep trading while they explore options for rescue. The UK government plans to bring forward legislation to this effect “at the earliest opportunity”. In summary:

  - Current insolvency rules stipulate that directors of limited liability companies can become personally liable for business debts if they continue to trade when uncertain about whether their businesses can continue to meet their debts. The government will temporarily suspend these wrongful trading provisions for company directors for a three-month period starting retrospectively from 1 March 2020

  - The government previously consulted on changes to the corporate insolvency regime and announced plans to introduce new insolvency restructuring procedures in August 2018. The new legislation to be introduced will implement these plans, which include a short moratorium for companies from creditors enforcing their debts for a period of time whilst they seek a rescue or restructure, protection of supplies to enable companies to continue trading during the moratorium, and an ability to bind dissenting stakeholders to a new restructuring plan.

  HMRC has also relaxed its approach to defaults under existing voluntary arrangements, as well as pausing its use of winding-up and bankruptcy petitions as an enforcement mechanism until 1 July 2020. HMRC guidance states that, if debtors in a voluntary arrangement face defaulting on the arrangement or on their post-arrangement tax obligations as a result of COVID-19, HMRC would expect supervisors to exercise their discretion to a maximum if the terms of the arrangement allow for this. The supervisor should refer such defaults for consideration by creditors only if essential. If creditors must be consulted:

  - HMRC will support a minimum three-month deferral of contributions. There is no need to contact HMRC to request this deferral.

  - HMRC will issue further guidance at the end of the three months, depending on the COVID-19 situation, potentially allowing for supervisors to exercise further discretion.

  - The deferral of VAT liabilities outlined above will not breach an arrangement that requires VAT to be paid as it falls due (although this will not forgive unrelated, earlier VAT breaches).

  HMRC has paused most of its enforcement activity until 1 July 2020 and will not be petitioning for bankruptcy or winding-up, unless considered essential — for example where relating to fraud or criminal cases. HMRC will still be an active creditor in new voluntary arrangements and administrations.

- **CFC rules and state aid recovery** – Group companies that benefited from the finance company exemption before 1 January 2019 under the UK's controlled foreign company (CFC) rules are required to repay HMRC, following a European Commission decision that the finance company exemption constituted unlawful state aid. Under the state aid recovery process, HMRC sent information requests to affected group companies. To help businesses deal with the impact of COVID-19, the 60-day deadline for responding to information requests has been extended by a further 30 days.

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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