

POLICY NOTE

THE NON-DOMESTIC RATES (RESTRICTION OF RELIEF) (SCOTLAND) REGULATIONS 2021

SSI 2021/145

The above Regulations are made in exercise of the powers conferred by section 153 of the Local Government etc. (Scotland) Act 1994 and all other powers enabling the Scottish Ministers to do so. The Regulations are subject to the negative procedure.

Purpose

The purpose of these Regulations is to set from 1 April 2021 a cap on the aggregate financial amount that can be awarded in the form of specified non-domestic rates reliefs. In calculating the cap regard must be had to previous relief of the specified types, to relief or assistance that prior to EU Exit would have been considered *de minimis* State aid and to relief or assistance that is a *de minimis* “subsidy” under Article 3.2.4 or 3.3.3 of Chapter 3 (subsidy control) of Title XI of Heading One in Part Two of the EU-UK Trade and Cooperation Agreement (TCA).

The specified reliefs are Renewables relief, Enterprise Areas relief, Telephone Mast relief, Rural relief, District Heating relief, Transitional relief and Day Nursery relief.

These reliefs and any *de minimis* assistance, when added together, must not exceed 325,000 Special Drawing Rights over a period of three fiscal years (the one in which relief or assistance is sought, and the two previous years)¹. This amount is the lower threshold set for *de minimis* subsidies by the TCA.² The effect is to ensure that any rates reliefs granted under the specified types of relief will be compliant with the requirements of the TCA, by being no more than the lower *de minimis* threshold.

Background

These Regulations follow on from and amend the Non-Domestic Rates (Restriction of Relief and Consequential Amendments) (Scotland) Regulations 2020³ (“the 2020 Regulations”) which came into force on 1 January 2021. In the absence of clarity in late 2020 with regard to the future national subsidy regime in the UK, following the end of the Brexit transition period on 31 December 2020, the 2020 Regulations maintained the restrictions provided by the state aid *de minimis* framework. The restrictions are set out in Article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union as it applied on the day the Regulations were made (23 November 2020). This approach ensures a continuity in policy and budgetary certainty with respect to the awards of existing reliefs and future reliefs granted throughout 2020-21.

All public authorities must, from 1 January 2021, have regard to commitments in the UK-EU Trade and Cooperation Agreement (“TCA”), Withdrawal Agreement, Northern Ireland

¹ This refers to the economic actor’s fiscal year.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

³ S.S.I. 2020/391.

Protocol, World Trade Organisation rules (including the Agreement on Subsidies and Countervailing Measures), and Trade Agreements between the UK and non-EU countries.

Non-domestic rates reliefs, like other subsidy or support measures, may be subject to the conditions set out in the TCA, which in certain cases limits sectoral public subsidies to 325,000 Special Drawing Rights over any period of three fiscal years. These Regulations therefore amend the 2020 Regulations, so that they will cease to apply from 1 April 2021. Instead, the restrictions in these Regulations will be used to determine when rates relief of the specified types is to be capped, and to what extent rates relief can be granted up to that cap.

Policy Objectives

The EU-UK Trade and Cooperation Agreement (TCA), applicable since 1 January 2021, sets out arrangements in areas such as trade in goods and in services and the granting of subsidies, to ensure that both parties compete on a level playing field.

At the date of making these Regulations there is not a system for national subsidy controls established in domestic legislation. These Regulations introduce a *de minimis* framework to the awarding of specified non-domestic rates reliefs in order to ensure that reliefs are aligned with the lower threshold set for *de minimis* relief by the TCA. The setting of the threshold at this level would not prevent grant of other subsidies where permitted by the TCA, but rates relief would be capped at the lower threshold.

Consultation

There is no statutory obligation to consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the Regulations will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

These Regulations have no direct financial implications.

Scottish Government
Local Government and Communities Directorate
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