CLIENT BRIEFING

THE CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME – AND ITS POTENTIAL IMPACT ON EIS RELIEF

23 March 2020

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CBILS is likely state aid

A key aspect of the CBILS is its interplay with the EIS tax relief rules. The British Business Bank is a development bank wholly owned by HM Government and, accordingly, the CBILS would likely fall within the rules on state aid.

It follows from EU case law that the very fact finance is made available to an enterprise may constitute state aid because it improves liquidity and demand for the enterprises' shares. This regardless of whether such finance is made available on purely on commercial terms or not.[1]

Specifically, the Court of Justice of the European Union has noted that "It should be borne in mind that Article 87 EC [now Article 107 of the Treaty of the Functioning of the European Union] prohibits aid granted by a State or through State resources in any form whatsoever, without drawing a distinction as to whether the aid-related advantages are granted directly or indirectly."[2]

Accordingly, the mere fact that the CBILS is available may constitute an indirect state aid.

Impact on EIS tax relief

To the extent that CBILS is classified as state aid, this could have an impact on companies which have received risk finance investment (i.e. SEIS, EIS, SITR, and VCT investments).

In particular, it is important to note that in accordance with EU state aid rules companies may only raise up to a limit of £5m annually or £12m in total on a life-time basis through risk finance investment (i.e. SEIS, EIS, SITR, VCT investment, and state aid). For knowledge intensive companies (i.e. companies that are carrying out research, development or innovation at the time that they are issuing shares) these limits are £10m annually and £20m in total.

For example, if a company seeks to raise finance and it has already raised £3m this year in EIS funding, the company can only receive up to £2m (including the 12 months interest payment) in additional CBILS-backed funding. To this end, please also note that under current rules funds raised through EIS cannot be used to discharge debt.

However, please note that the CBILS is still quite novel, and there are still significant uncertainties on material points. In particular, it is not clear yet whether the "value" of the state aid will be deemed to be the total value of the loan or some notional amount to reflect the "value" of the government guarantee, i.e. the difference between the lender not being willing to lend that amount of money without the guarantee and the lender being willing to lend it on basis of the guarantee which would likely also have a financial value. Therefore, in the interim until the aforementioned point has been clarified, companies who are close to the annual or life-time limits may need to be careful about whether the amount borrowed would take them above one of those limits.

Further guidance is expected

As noted above, the CBILS is being continuously updated, and its scope has already been expanded significantly. Further guidance from HM Government is expected, and this should hopefully include clarification on the interplay between CBILS-backed loans and the EIS rules. Rooney Nimmo will continue to monitor the developments closely.

In this unprecedented crisis where many firms activated emergency plans which often impacts operational efficiency, Rooney Nimmo have drafted a template "support letter" covering the eligibility criteria, and which is made available to our clients. Please get in touch get more information on this.

BACKGROUND

On 17 March 2020, Rishi Sunak, the Chancellor of the Exchequer, announced a package of £330bn in loan guarantees and a £20bn fiscal intervention including further business rate relief for companies to support businesses affected by the novel coronavirus COVID-19.

These measures, which are unprecedented in scale, includes, for example:

- the new temporary Coronavirus Business Interruption Loan Scheme ("CBILS") for small and medium-sized businesses;
- a Coronavirus Job Retention Scheme;

- deferring VAT and Income Tax payments;
- a Statutory Sick Pay relief package for SMEs;
- a 12-month business rates holiday for all retail, hospitality and leisure businesses in England;
- small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief;
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000;
- a new lending facility from the Bank of England to help support liquidity among larger firms, helping them bridge coronavirus disruption to their cash flows through loans; and
- the HMRC Time To Pay Scheme.

The Chancellor committed himself to "do whatever it takes" to support UK businesses, including expanding these measures further should that be necessary.

The British Business Bank's ("BBB") will launch the CBILS this week beginning to primarily support SMEs access funding. The CBILS is still quite novel and is being continuously updated. This Client Briefing gives a general overview of the CBILS and please bear in mind that the framework may change rapidly.

THE CBILS

The CBILS will initially support up to £1.2bn of lending by associated lenders (the original announcement suggested a maximum value of £1bn), including Lloyds Bank, HSBC, Barclays, Santander, etc. A list of the lenders associated with the CBILS is found here: www.british-business-bank.co.uk/stay-ahead/#partners

It will replace the existing £500m Enterprise Finance Guarantee ("EFG") to facilitate the provision of business finance to smaller businesses affected by COVID-19.

The key features of the CBILS are:

a) loan facilities up to £5m (the original announcement suggested a maximum value of £1.2m) on repayment terms of up to six years;
b) a government-backed, partial guarantee (80%) against the outstanding facility balance, subject to an overall cap per lender;
c) No guarantee fee for SMEs to access the CBILS (Lenders will pay a fee to access the CBILS);
d) Interest and fees paid by Government for 12 months (the original announcement suggested a maximum interest free term of 6 months) and any lender-levied fees through a Business Interruption Payment. This means that smaller businesses will benefit from no upfront costs and lower initial repayments;
e) Finance terms are up to 6 years for term loans and asset finance facilities;
f) Finance terms are up to 3 years for overdrafts and invoice finance facilities;
g) at the discretion of the lender, the scheme may be used for unsecured lending for facilities of £250,000 and under; and
h) for facilities above £250,000, the lender must establish a lack or absence of security prior to businesses using CBILS. If the lender can offer finance on normal commercial terms without the need to make use of the scheme, they will do so.

Similar to the EFG, the idea is to give lenders associated with the CBIL more confidence in approving credit decisions for SMEs that have insufficient security to meet the lender's normal requirements.

The CBILS is intended to support a wide range of business finance products, for example, term facilities, overdrafts, invoice finance facilities, and asset finance facilities. It is expected that the CBILS will offer more attractive terms than the EFG for both businesses applying for new facilities and lenders as it aims to support the continued provision of finance to UK businesses during the Covid-19 outbreak. For example, finance terms will be from three months up to 10 years for term loans and asset finance and up to three years for revolving facilities and invoice finance.

A key difference between CBILS and EFG is that the BBB will not charge small businesses or banks for this guarantee. Furthermore, HM Government will waive the 2% it has been charging borrowers annually for the EFG guarantee. However, as with EFG the borrower will remain completely liable for the debt.

Eligibility

The BBB have made clear that they are in the process of defining and agreeing the scheme's details, specifications and eligibility. As such the following information is still subject to change.

Smaller businesses from all sectors can apply for the full amount of the facility. To be eligible for a facility under CBILS, an SME must at this time:

a) be UK-based in its business activity, with annual turnover of no more than £45m (the original announcement suggested a maximum value of £41m); and
b) have a borrowing proposal which, were it not for the current pandemic, 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.

[1] *Associazione italiana del rispermio gestito and Fineco Asset Management Spa v Commission of the European Communities* (Case T-445/05).
[2] *ibid* at paragraph 127.

Please note that in the original announcement it was suggested that:

a) the EFG list of eligible industries were to be applied. This is no longer the case. Although, fishery, aquaculture and agriculture businesses may not qualify for the full interest and fee payment. This is no longer the case;
b) to be eligible a company must not have received up €200,000 in *de minimis* state aid in the last two fiscal years; and
c) the company would be unable to meet a lender's normal lending requirements for a fully commercial loan or other facility but would be considered viable in the longer-term.

The above a) to c) is no longer the case. The rules relating to the CBILS are rapidly being updated and further guidance is expected to be made available from HM Government. Rooney Nimmo will continue to monitor the developments closely.

How to apply

The decision making in relation to the CBILS is currently fully delegated to the associated lenders. Accordingly, applications are made through the respective lenders.

GET IN TOUCH

Should you have any questions to the topics covered in this article, please get in touch with your Rooney Nimmo contact or any of the persons below.

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