

## **Enterprise Zones and Business Rate Discounts - State Aid Guidance**

### **State Aid De Minimis Regulation and Discretionary Business Rate Discounts**

This note provides guidance to local authorities applying the business rate discount feature of Enterprise Zones, which must be administered within the State Aid De Minimis levels (see [Commission Regulation EC/ 1998/2006](#) - “the De Minimis Regulation” and aid awarded thereunder, “De Minimis”). It does not cover Enhanced Capital Allowances in Enterprise Zones - these will be managed under a separate process (specifically an exemption to State Aid available due to these zones being located in assisted areas), or any other aid provided to undertakings with premises in Enterprise Zones.

#### **Why have State Aid rules?**

The State Aid rules regulate public sector intervention, with the aim of ensuring fair competition and the proper functioning of the single market. Giving unregulated financial support to some businesses would:

- risk distorting competition within the European common market; and
- hinder the long-term competitiveness of the European Union.

#### **Monitoring State Aid**

The European Commission monitors and controls State Aid in the EU. Where State Aid is present (because it meets the conditions set out in Article 107(1) of the TFEU<sup>1</sup>) it may only be awarded where it is compatible with the common market because it is either within the terms of an existing European Commission approval or the European Commission has given advance approval of the award through the notification process. However, small amounts of aid (“De Minimis” aid), awarded in accordance with the De Minimis Regulation, will be regarded as being compatible with the common market.

Tax exemptions are capable of constituting State Aid, which is why business rate discounts in Enterprise Zones must be administered within State Aid levels set out in the De Minimis Regulations. For most organisations,<sup>2</sup> the total amount of De Minimis aid that can be paid will be €200,000<sup>3</sup> within a three year period<sup>4</sup>. De Minimis aid from other sources must be taken into

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<sup>1</sup> Treaty on the Functioning of the European Union

<sup>2</sup> State Aid applies to organisations (‘undertakings’) which carry out a tradable activity regardless of whether they are a charity, business or not for profit entity.

<sup>3</sup> The local authority is required to refer to the De Minimis Regulation 1998/2006 as some sectors have a lower threshold. For the avoidance of doubt, the threshold applies per undertaking, which will normally be the business group rather than the company. The [New SME definition](#) guidance provides further detail.

<sup>4</sup> Subject to how much other De Minimis aid has been received in the current financial year and the two previous financial years.

account in determining the amount of business rate discount that may be given to any undertaking. Exceeding the De Minimis threshold will constitute an unlawful State Aid and could result in clawback by the Commission.

Under the [present procedural rules](#), the Commission is under the obligation to order the recovery from the beneficiaries of any unlawful aid that is found to be incompatible with the common market. Failure to apply the De Minimis exemption correctly in relation to the discretionary business rate discount may result in unlawful aid. Recovery will be for the full amount of the aid (regardless of whether only part of it exceeds the threshold) and will include compound interest from the date of the award.

Under the Enterprise Zone business rate discount scheme, the billing authority is the aid administrator and so is responsible for ensuring the rules are met. In addition, any discounts given that lead to the De Minimis aid levels being exceeded cannot be deducted from contributions to the business rates pool - see the Non-Domestic Rating Contributions (England) (Amendment) Regulations 2012.

## **De Minimis Levels**

The current threshold, set out in the De Minimis Regulation, is €200,000 over three fiscal years.

The three year period means the limit is for an amount in the current financial year and the two previous financial years, on a rolling basis. This means that, if eligible, a company located in an Enterprise Zone that is not receiving any other De Minimis aid could receive a business rate discount equal to up to a third of the threshold amount in each year for three years, or could receive a discount equal to the whole amount of the threshold in year one, and then no discount in the second and third year.

## **Requirements for Granting De Minimis Aid**

The procedural requirements of the De Minimis Regulation include:

- 1) Ensuring that the recipient undertaking will not breach their De Minimis threshold by receiving the aid. A declaration confirming any previous amounts received must be obtained before any aid is provided.
- 2) For most recipients, the ceiling for De Minimis will be €200,000 over the current fiscal year and the two previous fiscal years. The ceiling for De Minimis aid for undertakings involved in road transport is €100,000. De Minimis aid cannot be given to enterprises in road haulage operations for the acquisition of road freight transport vehicles.
- 3) De Minimis aid cannot be given to enterprises in the agriculture sector (with the exception of those active in processing and marketing of agricultural products); to enterprises active in the coal sector; to undertakings in difficulty; or for directly export-related activities.

- 4) De Minimis aid should not be given towards the same costs that are being supported under another block exemption or notified scheme. It is unlawful to provide De Minimis for costs being funded under the State Aid cover of an exemption or notified scheme, if it means the specific allowable aid intensity will be exceeded.
- 5) There is a requirement to inform the recipient that the aid being given is De Minimis and to keep records of aid given for at least ten years.
- 6) De Minimis aid cannot be provided for the setting up of distribution networks, export aid or provided to businesses which are in difficulty<sup>5</sup>.

Where a local authority has any questions about applying the De Minimis Regulation, they are recommended to speak to their legal department.

### **Meeting the De Minimis Regulation Requirements**

In the case of Enterprise Zones, it is recommended that, before granting the discount to businesses, a letter is sent which specifies that the business may be entitled to receive De Minimis aid and makes express reference to the De Minimis Regulation. This letter should ask the recipient business for information on other awards of aid provided under the De Minimis Regulations received in the current and two previous fiscal years. The administrator is required to obtain a declaration from the recipient that receiving the aid will not lead to them exceeding their De Minimis threshold.

The onus is on the recipient of aid to demonstrate that they can receive the discretionary business rate discount within the De Minimis threshold. Usually where De Minimis aid has been provided the organisation will have been informed by letter that the support has been provided under the De Minimis Regulation. No aid should be provided unless it is possible to establish that the €200,000 threshold will not be exceeded. If some aid has been received by the undertaking in previous years but this does not exceed the De Minimis limit, then a partial business rate discount may be granted up to the De Minimis threshold level. The offer letter must include a statement of the aid provided in accordance with the De Minimis Regulation (see below).

To help applicants provide you with all this information you may consider including in the letter to applicants an illustrative list of possible forms of assistance which could comprise public aid, State Aid or De Minimis aid. See the letter below for examples.

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<sup>5</sup> As defined under the Rescue and Restructuring Guidelines - [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC1001\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC1001(01):EN:HTML)

## **Additional Questions and Answers on State Aid De Minimis and Enterprise Zones**

*Q. Is it correct that the De Minimis threshold applies to all aids received by a parent company / group of businesses rather than just a subsidiary, i.e. a subsidiary located in an Enterprise Zone would not be eligible for the discount if its parent company (located elsewhere) had already received up to or over the De Minimis level of state aid in the three year period?*

A. Yes, this is correct. The De Minimis threshold applies to the entire enterprise. The [SME definition guidance](#) may assist in the identification of the relevant undertaking.

*Q. We heard that there was a recent time-limited State Aid exemption in place. Presumably this was something agreed at Commission level and there is no plan to put in place any new such exemption?*

A. The De Minimis limit remains at €200,000. There was a temporary state aid framework for the financial crisis (called the Small Amounts of Compatible Aid Scheme N43/2009), but this did not increase the De Minimis limit as such, and it has also now ended.

*Q. If an organisation has received State Aid under an alternative State Aid exemption or notification, does this need to be listed in the De Minimis declaration?*

A. No. Only aid provided under the De Minimis Regulations in the current fiscal year and the two previous fiscal years needs to be declared.

*Q. Does the Commission need to be informed of De Minimis aid?*

A. The administrator will be required to report upon the total amount of aid provided each year through the De Minimis exemption. However they are not required to notify the Commission each time they provides De Minimis aid. Care should be taken to ensure they comply with all the requirements set out in the De Minimis Regulation. The key requirement is that the provider of the aid - in this case, the local authority who provides the discount - writes to the company in question to inform them of the intention to grant De Minimis aid, with the company informing them of any De Minimis aid they have already received.

*Q. Are there any restrictions in the provision of De Minimis aid?*

A. There are some restrictions to the provision of De Minimis aid that local authorities and LEPs will need to be aware about. The main restrictions are: De Minimis aid cannot be provided to a business in difficulty, for the agriculture or coal sectors, or for export related activity. A reduced limit applies to companies active in the road transport sector and no De Minimis aid can be provided to companies in road haulage operations for the

acquisition of vehicles. Authorities are advised to consult the De Minimis Regulation for more detail.

*Q. Is the provision of De Minimis aid (as in the case of the business rate discount) affected by the Enterprise Zone being in an assisted area or not?*

A. No. The assumption with De Minimis aid is that, as long as it is given in compliance with the regulation, it is at such a level that it will not distort the market.

*Q. Who will be liable for any state aid 'problems'?*

A. If illegal state aid was provided through the business rate discount then - as the body administering that element of the package - the billing authority where the zone is sited would be responsible for recovering the money from the company that received it (with compound interest) and could be at risk of legal challenge from anyone who thought that they had been disadvantaged by the paying of illegal aid.

Ultimately, whichever public authority that provides aid needs to make a judgement on the state aid risk, and would be responsible for recovering any illegal aid. Where a public authority has concerns about the application of the De Minimis Regulation they are recommended to involve their legal department.

*Q. What conversion rate should be used to calculate the discount?*

A. The Commission's reference exchange rate should be used, as it is or was on the day that the Aid is granted. The reference rates can be found at: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm).

*Q. What is the interaction between business rate discounts in Enterprise Zones and other discretionary reliefs?*

A. Any other discretionary relief provided to the undertaking must be taken into account in applying the De Minimis levels.

## **Further Information**

Further information on State Aid and compliance can be found at <http://www.bis.gov.uk/policies/europe/state-aid> including links to relevant commission regulations.

If you have additional questions not covered by this note please forward them to [enterprisezones@communities.gsi.gov.uk](mailto:enterprisezones@communities.gsi.gov.uk)

9 March 2012

## **Annex A - EXAMPLE LETTER REQUESTING INFORMATION ABOUT DE MINIMIS AID PREVIOUSLY RECEIVED**

*A letter should be used to determine the value of any relevant aid previously received by a potential beneficiary, in order to ascertain whether there is scope to provide a business rate discount under the De Minimis exemption.*

Dear [     ]

State Aid De Minimis Declaration - Enterprise Zones

State Aid rules exist to avoid public funded interventions distorting competition within the European Union. You should note carefully the requirements needed to comply with the European State Aid rules and if need be, refer to the relevant legislation.

You are being considered for assistance under the De Minimis Regulation (Regulation 1998/2006). Specifically, you are being considered for a business rate discount due to your location within the [     ] Enterprise Zone. The De Minimis Regulation allows an enterprise to receive up to €200,000 De Minimis aid over any period of three fiscal years (as set out in EC Regulation 1998/2006 as published in the Official Journal of the European Union on 28 December 2006).

To establish whether you are eligible to receive De Minimis aid you must declare the full amount of De Minimis aid which you have already been granted during the previous two fiscal years and the current fiscal year. Any assistance you may have received from a public body might be a De Minimis aid. This could be from central, regional, devolved governments or agencies or a local authority.

Please complete the Statement of Previous Aid received under the De Minimis exemption (below) and arrange for a director of your business to sign the declaration. We will use this information to assess your eligibility to receive assistance.

The following is not a comprehensive list of all possible forms of aid. However, it should give you an indication of common forms of aid which you may have been given over the past three years. If you have received De Minimis aid, you should have received a letter informing you that the assistance you were given was under the De Minimis regulation. If you are in any doubt as to whether previous assistance received would constitute De Minimis assistance please raise your concerns with us as soon as possible.

Forms of possible aid:

- State grants;
- Interest rate relief;
- Tax relief;
- Tax credits;

- State guarantees or holdings;
- State provision of goods or services on preferential terms;
- Direct subsidies;
- Tax exemptions;
- Preferential interest rates;
- Guarantees of loans on especially favourable terms;
- Acquisition of land or buildings either gratuitously or on favourable terms;
- Provision of goods and services on preferential terms;
- Indemnities against operating losses;
- Reimbursement of costs in the event of success;
- State guarantees, whether direct or indirect, to credit operations preferential re-discount rates;
- Dividend guarantees;
- Preferential public ordering;
- Reduction of, or exemption from, charges or taxes, including accelerated depreciation and the reduction of social contributions;
- Deferred collection of fiscal or social contributions;
- Assistance financed by special levies;
- Capital transfers;
- Certain State holdings in the capital of undertakings.

Yours faithfully

[     ]

**EXAMPLE STATEMENT OF PREVIOUS AID RECEIVED UNDER THE DE MINIMIS EXEMPTION**

I confirm that [NAME OF UNDERTAKING] has received the following De Minimis aid during the previous 3 fiscal years (this being the current fiscal year and the previous two fiscal years):

Organisation providing the assistance/aid	Value of assistance	Date of assistance	Nature of assistance

I acknowledge that I am authorised to sign on behalf of [ NAME OF UNDERTAKING ] and understand the requirements of De Minimis (EC Regulations 1998/2006).

[ NAME OF UNDERTAKING ] is not a business “in difficulty” as defined at 2.1 of the Community Guidelines and State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C22/02) at the date of this declaration.

By signing below, I confirm that I represent [NAME OF UNDERTAKING] and that the information set out above is accurate for the purposes of the De Minimis exemption.

SIGNATURE:

NAME:

BUSINESS:

POSITION:

DATE:

## EXAMPLE FOLLOW UP LETTER

Dear [ ]

ENTERPRISE ZONES  
STATE AID: DE MINIMIS AID

Further to our letter of [date] we are pleased to confirm that [Name of Undertaking] received assistance to the value of £[ ] which at the European conversion rate on the date of the award was €[ ]. This was provided as a business rate discount due to the presence of [NAME OF UNDERTAKING] in the [ ] Enterprise Zone. This was provided as De Minimis Aid under EC Regulation 1998/2006.

We strongly recommend that you maintain a record of this De Minimis assistance for future reference and so that it can be provided if your organisation subsequently applies for or is offered other De Minimis aid.

For the purposes of the relevant legislation, you must retain this letter for 3 years from the date on this letter and be able to produce it on request by the UK public authorities or the European Commission. You may need to keep this letter longer than 3 years for other purposes.

Yours faithfully

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