

INFORMATION PAPER FOR GBC

Following queries raised at the Developers Forum in September in respect of Exceptional Circumstances Relief, the following paper has been prepared as a guide.

EXCEPTIONAL CIRCUMSTANCES RELIEF

A charging authority may grant relief for exceptional circumstances from liability to pay the CIL if it appears to the authority that there are exceptional circumstances which justify doing so and that it considers it expedient to do. However it can only grant relief if it has made relief for exceptional circumstances available in its area; a s 106 agreement has been entered into in respect of the planning permission which connects the chargeable development and the charging authority considers that the cost of complying with s 106 is greater than the charge from the CIL payable; requiring payment of the charge would have an unacceptable impact on the economic viability of development; and granting relief would not constitute a notifiable state aid.

A charging authority which wishes to make exceptional circumstances relief available in its area must issue and publish a statement which gives notice that the relief is available and the date on which it will begin accepting claims for the relief.

A claim for relief must be submitted by an owner of material interest on the appropriate form and must be received by the charging authority before commencing the chargeable development. It must be accompanied by the following:

- an independent assessment of the cost of complying with the planning obligation;
- an independent assessment of the economic viability of the chargeable development;
- an explanation of why payment of the chargeable amount would have an unacceptable impact on the economic viability; and
- where there is more than one material interest in the land, an apportionment assessment.

The charging authority must make its decision on the claim as soon as practicable and inform the claimant in writing of its decision on the amount of relief granted.

The chargeable development can cease to be eligible for exceptional circumstances relief if, before the chargeable development is commenced, charitable or social housing relief is granted, an owner of a material interest makes a material disposal of that interest, or the chargeable development is not commenced within 12 months from the date on which the charging authority issues its decision on the claim.

NOTIFIABLE STATE AID

Four criteria must all be satisfied for aid to constitute state aid:

- Criterion 1: It is granted by the state or through state resources. State resources include public funds administered by the Member State through central, regional, local authorities or other public or private bodies designated or controlled by the State. It includes indirect benefits such as tax exemptions that affect the public budget.

- Criterion 2: It favours certain undertakings or production of certain goods. In other words it provides a selective aid to certain entities engaged in an economic activity (an “undertaking”). Economic activity is the putting of goods or services on a given market. It can include voluntary and non profit-making public or private bodies such as charities or universities when they engage in activities on a market. It includes self-employed/sole traders, but generally not employees as long as the aid does not benefit the employers, private individuals or households.
- Criterion 3: It distorts or threatens to distort competition. It potentially or actually strengthens the position of the recipient in relation to competitors. Almost all selective aid will have potential to distort competition - regardless of the scale of potential distortion or market share of the aid recipient.
- Criterion 4: It affects trade between Member States. This includes potential effects. Most products and services are traded between Member States and therefore aid for almost any selected business or economic activity is capable of affecting trade between States. This applies even if the aided business itself does not directly trade with Member States. The only likely exceptions are single businesses. For example, hairdressers or dry cleaners with a purely local market not close to a Member State border. The case law also demonstrates that even very small amounts of aid can affect trade.

All relief from the levy must be given in accordance with state aid rules. For charitable exemptions, discretionary charitable relief and exceptional circumstances relief this means a collecting or charging authority must determine whether or not giving the exemption or relief constitutes a state aid.

DE MINIMIS BLOCK EXEMPTION

De minimis is a generic term for small amounts of public funding to a single recipient. De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 (€100,000 for undertakings active in the road transport sector) over a rolling three fiscal year period. The threshold is gross, applying before the deduction of tax or any other charge. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects. The block exemption does not apply in certain sectors, including fisheries and coal sector, certain agriculture and transport activities.

Example

A local builder obtains planning consent for 20 houses each of 80m² in the highest charge zone, Zone 3. The CIL charge on the development would be calculated as follows:

$$\text{£95m}^2 \times 80\text{m}^2 \times 20 \text{ units} = \text{£152,000.}$$

€200,000 equates to approximately £162,000, therefore the de minimis rule could be applied and full or partial relief granted (provided the award would not result in the recipient exceeding the prescribed limit).

Follow link to CLG document on Exemptions and Reliefs:

www.communities.gov.uk/documents/.../pdf/19021101.pdf