



Accounting for, and awarding of, mandatory and discretionary relief- how will new leisure trusts be treated?

To: APSE Members in **England**

Key Issues

- The Local Retention of Business Rates Scheme came into affect April 1 2013 and sees local authorities retain 50% of business rate income including growth.
- New arrangements of non domestic relief entered into after 1 April 2013, such as those awarded to leisure trusts, will still attract 80% mandatory relief but only 50% of this will be funded by central government, with 50% funded by the local authority.
- The changes to non-domestic mandatory and discretionary rate relief mean Local Authorities need to be clear what their policy is in regard to accounting for and awarding relief and how this impacts on the financial business case of certain service delivery models such as leisure trusts.

1. Introduction

This short briefing provides an additional update to [The Local Retention of Business Rates Briefing](#) that was issued in March 2013 (13/08) and focuses on points to consider around the accounting and awarding of mandatory and discretionary relief post 1 April 2013. It explicitly answers the question *"How will new leisure trusts created after 1 April 2013 be treated in terms of business rates relief under the new system"*.

The key point is that if an authority grants either mandatory or discretionary relief to any organisation or business after it has submitted its assessment of the business rates it will collect in a year, then it will have to pick up 50% of the shortfall in rates collected, due to the reliefs, with central government picking up the other 50%. Costs of relief will be shared 50:50 between central and local government.

The advice in this paper is supported by further analysis work conducted by Walker Morris Solicitors LLP. This paper only applies to local authorities in England.

2. Forms of non domestic relief available to organisations

There are two forms of relief available: mandatory and discretionary relief. Mandatory relief was formally provided under Section 43(6) of the Local Government Finance Act (1988) and provided that:

- Charities must receive 80% relief on the rates for premises which are wholly or mainly used for charitable purposes; and

- Community and Amateur Sports Clubs (CASC) must receive 80% relief on the rates for premises which are wholly or mainly used for the purposes of the club itself, or for the purposes of the club and other Community and Amateur Sports Clubs.

Discretionary relief is given under section 47 of the Local Government Finance Act 1988, as amended by the Localism Act 2011. Local authorities are now free to grant up to 100% discretionary relief to any organisation, including profit-making ones. They also have the discretion to 'top up' the 80% mandatory relief given to charities and amateur sports clubs to 100%, if:

- the organisation is a not-for-profit one (e.g. a social enterprise) and its main objects are charitable or otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
- the premises are wholly or mainly used for recreation purposes and all or part of them are occupied for the purposes of a not-for-profit organisation.

3. Changes to non domestic relief entered into after 1 April 2013

Prior to the introduction of the Business Rate Retention Scheme, the cost of mandatory and discretionary relief was generally met by central government as part of the redistribution exercise of business rates collected. This meant the setting up of organisation, such as Leisure Trusts, became a very attractive way of saving money or/and way of offsetting the savings on business rates to support capital investment in facilities.

However, new arrangements entered into after April 2013 will still attract 80% mandatory relief but only 50% of this will be funded by central government. In practice, this means that any new mandatory and/or discretionary reliefs granted during the year will mean a reduction in the business rates income an authority actually receives as against its estimate. As such deficit is split 50:50, the local authority ends up funding 50% of the relief.

For 'new' (post 1 April) applications and changes to existing applications of mandatory/discretionary relief the following cost burdens apply:

Charitable organisation attracts:

- 80% Mandatory relief- 50% of the 80% is met by local authorities; 50% by central government
- 20% Discretionary 'top-up' relief- 50% of the 20% is met by local authorities; 50% of the 20% is met by central government

Not for profit organisation attracts:

- Up to 100% Discretionary relief- 50% is met by local authorities; 50% met by central government

The local authority has complete discretion as to whether or not to grant discretionary relief (either 'top up' relief for charities and sports clubs that already attract mandatory relief, or up to 100% discretionary relief for organisations that fall within the above criteria). Therefore the financial advantages to the local authority of operating under a trust basis have been lessened because arguably it is self defeating to grant business rate relief which ultimately the authority must fund substantially from its own resources. Additionally the local authority has the power to withdraw discretionary relief at any time.

For all other types of organisation (i.e. profit-making ones), the authority can only decide to grant discretionary relief (in an amount of its choosing) if it is satisfied that it would be reasonable to do so, having regard to the interests of its council tax payers. Local authorities must have regard to any relevant guidance issued by the Secretary of State when deciding whether to grant discretionary relief. So far no guidance has been issued. State aid also needs to be considered in such cases.

4. What does this mean for leisure trusts?

The Government formerly funded 25% of the cost of the discretionary 'top up' relief for charities and community amateur sports clubs, under Schedule 1 paragraph 3 of the Non-Domestic Rating Contributions (England) Regulations 1992, (as amended in 2011). It appears however that the underlying legislation on which these Regulations are based has been amended so that it only applies in Wales. Therefore in England, all discretionary relief will now be treated in the same way as mandatory relief, with the authority picking up 50% of the cost.

It is important that APSE member authorities take appropriate advice on the implications of the changes to business rates in England for existing and future leisure trusts in order to ensure that local authorities understand the financial implications of the changes for their service delivery arrangements.

5. Structuring organisations to take advantage of the reliefs available

So how much discretionary relief should a local authority grant to an organisation that does not qualify for mandatory relief, given that the authority now has to pick up 50% of the cost of that relief?

In theory, the amendment to section 47 of the Local Government Finance Act 1988 means that an authority can choose to grant up to 100% discretionary relief to any business, even a profit-making one (subject to the state aid rules), and central government will fund 50% of this. In practice however, the criteria to qualify for discretionary relief are likely to be set quite narrowly, so that the organisation must show some benefit to the community/priority groups in return for being granted discretionary relief. The percentage of relief granted may vary depending on the benefits shown.

For a local authority looking to structure a new organisation, it makes no real difference how they structure a new organisation to which they want to grant business rates relief, as whether such relief is mandatory or discretionary, the authority still has to fund 50% of it. However, if the organisation is profit-making, the local authority must be satisfied that it is reasonable to do so before granting the discretionary relief, having regard to council taxpayers' interest.

6. APSE Comment

Whilst local authorities are now afforded greater discretion to grant discretionary rate relief, the power to use this for the benefit of local communities and economies in reality is limited as central government will now only meet 50% of the costs of awarding discretionary relief. This leaves Local Authorities to finance such new arrangements substantially from their own dwindling resources.

If you need further advice on the implications for local authority leisure trusts you can contact APSE solutions: solutions@apse.org.uk or contact APSE's Principal Advisors on 0161 772 1810.

Helen Burkhalter, Principal Advisor, APSE

June 2013