

# ITSG GLOBAL TAX JOURNAL

**COVID-19**  
RELIEF ACROSS THE WORLD

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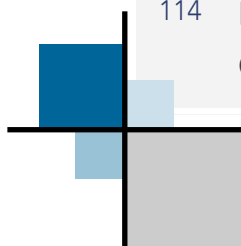
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# ASIA

## COVID-19: INDIA TAX AND REGULATORY UPDATE

By **Jairaj Purandare** and **Shibani Bakshi Parekh**  
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*Key highlights of economic measures in India in the wake of the COVID-19 pandemic*

14 April 2020

The COVID-19 outbreak has created a worldwide health emergency and in anticipation of a major crisis, the Indian Prime Minister had announced a nation-wide lockdown (excluding essential commodities) for 21 days from 25 March 2020 to 14 April 2020. In a telecast to the nation on 14 April, the Prime Minister announced an extension of the lockdown till 3 May 2020.

Lockdown 2.0 will involve a strategy for continuous monitoring of COVID-19 cases in every city, town, and district till 20 April 2020. Based on the data collected, there may be a gradual relaxation of norms in certain zones in order to partially commence economic activity. Detailed guidelines in this regard were released on 15 April. The focus of the guidelines is largely on aiding farmers in the ongoing harvest season and providing support to daily wage earners. While a substantial economic stimulus package is expected to be provided by the Indian Government in the next few weeks, no official announcement has been made yet.

Earlier, the Indian Government had announced several relief measures for the lower sections of society as well as some relaxations in its policies, particularly relating to statutory and regulatory compliances for business.

We summarize below the key highlights of the tax and regulatory measures announced by the Indian Government:

### DIRECT TAXES

- A special fund, Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' ('PM CARES Fund') has been set up to



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accept donations in order to provide relief to people affected by COVID-19. The donations to this fund made up to 30 June 2020 will be eligible for a 100% deduction in FY 2019-20 (1 April 2019 to 30 March 2020).

- The due date for filing an application and payment of tax under the “Tax Amnesty Scheme,” Vivad se Vishwas scheme, which was recently introduced by the Government to reduce litigation, has been extended from 31 March 2020 to 30 June 2020. The additional tax of 10% which was earlier payable if the tax payments were made on or after 1 April 2020 is now applicable to tax payments made on or after 1 July 2020.
- The due date for filing a delayed or amended income tax return for FY 2018-19 (1 April 2018 to 31 March 2019) has been extended from 31 March 2020 to 30 June 2020.
- Keeping in mind the fact that cash flows have been affected due to the lockdown, the due date for making various investments eligible for a tax break for FY 2019-20 has been extended from 31 March 2020 to 30 June 2020. Eligible investments include life insurance and Mediciam premiums, contribution to pension funds, charitable donations, investments in eligible exemption schemes in respect of capital gains, etc.
- The due date of commencement of operations for Special Economic Zone (‘S.E.Z.’) units which are eligible for certain tax exemptions, has been extended from 31 March 2020 to 30 June 2020, for those units that have received the necessary approvals on or before 31 March 2020.
- The validity of certificates for lower tax withholding issued for FY 2019-20 has been extended to 30 June 2020 for those taxpayers whose applications for FY 2020-21 are pending for disposal with the tax office. Further, the taxpayers that received the certificate for FY 2019-20 but did not apply for one for FY 2020-21 will be granted the extension provided they submit their application by email to the tax office under the specified procedure. Further, a tax at the rate of 10% will be withheld from payments made to non-residents having a permanent establishment in India who neither have a certificate for FY 2019-20 nor have applied for a certificate for FY 2020-21. The withholding will remain in effect till 30 June 2020.
- The interest rate on failure to timely pay the income tax, withholding tax, tax collected at source, Equalization Levy, Securities Transaction Tax, etc. which are due for payment between 20 March 2020 and 29 June 2020, has been reduced from 12% or 18% p.a., as applicable, to 9% p.a. Further, penalty proceedings will not be initiated in case of non-payment of such taxes.

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- In order to provide immediate relief to business entities and individuals, the Government has decided to immediately issue all pending refunds up to INR 0.5 million (~US\$ 7,000).
- Various due dates pertaining to issue of notices, intimations, orders, appeals, and completion of proceedings by the tax authorities have been extended to 30 June 2020.

## INDIRECT TAXES

- The Government has allowed entities with annual turnover of less than INR 50 million (~US\$ 0.7 million) to file their monthly Goods and Services Tax ('G.S.T.') returns for the months of March, April, and May 2020 by the end of June 2020, instead of in the immediately following month, without the levy of interest or penalty. However, for other entities, a reduced interest rate of 9% p.a. will be charged effective 15 days after the due date.
- The due date for filing the annual G.S.T. return for FY 2018-19 has been extended from 31 March 2020 to 30 June 2020.
- For FY 2020-21, the due date to elect the G.S.T. Composition Scheme has been extended to 30 June 2020. In the absence of this relief, the election should have been made before 31 March 2020. For those already covered under the G.S.T. Composition Scheme, the due dates for making tax payments for the last quarter and submitting the annual return for FY 2019-20 have been extended from April 2020 to 30 June 2020.
- Tax refunds under the G.S.T. and Customs law will be immediately issued with the objective to provide immediate liquidity to taxpayers.
- The Government had previously introduced a dispute resolution scheme to settle disputes under the erstwhile indirect taxation regime. Payments covered under this scheme can now be made till 30 June 2020 without paying any additional interest.
- To ensure that the export and import procedures do not get adversely affected by the reduced working capacity, the Government has announced that Custom clearances will be available around the clock till the end of June 2020.
- In view of the irregular work schedule, various due dates under the G.S.T. and Customs law for issue of notices, approvals, appeals, furnishing of returns, and other compliances have been extended to 30 June 2020.
- The validity of the 5-year Foreign Trade Policy of Government of India, which was valid up to 31 March 2020, has been extended by one year, i.e., up to 31 March 2021.

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### CORPORATE LAW UPDATES

- The Ministry of Corporate Affairs ('M.C.A.') has classified donations to PM CARES Fund as an eligible Corporate Social Responsibility ('C.S.R.') activity in order to encourage corporations to make donations to the said fund.
- The M.C.A. has waived the late filing fees for all documents, returns, or statements to be filed during a moratorium period between 1 April 2020 and 30 September 2020. Further, the M.C.A. also launched a "Companies Fresh Start Scheme" giving a one-time opportunity to defaulting companies to furnish pending documents between 1 April 2020 and 30 September 2020 without paying any penalty.
- The maximum permissible gap between two board meetings has been extended from 120 days to 180 days. The requirement of holding board meetings with the physical presence of board members for approval of financial statements, board reports etc. has also been relaxed till 30 June 2020 by permitting them to do the same using video conferencing or other audio-visual means. Further, the requirement for independent directors to conduct at least one meeting without the presence of other directors has also been relaxed for FY 2019-20. The non-fulfilment of the condition that at least one director of a company should have been present in India for 182 days or more will not be treated as a violation.
- In anticipation of the lockdown and irregularity in working conditions, the M.C.A. released a form for companies to determine their readiness if their employees need to work from home.
- Various relaxations have been provided to companies that are required to invest in certain specified debentures or deposits keeping in mind irregularities in cash flows.

### SECURITIES MARKET

- The Securities and Exchange Board of India ('S.E.B.I.') has relaxed certain provisions for listed entities (including Real Estate Investment Trusts and Infrastructure Investments Trusts).
- Additional time limit ranging from 21 days to 90 days beyond the respective due dates has been provided for various reporting and filing requirements relating to investor complaints, shareholding pattern, meetings between committees, corporate governance, listing obligations, Foreign Portfolio Investors ('F.P.I.s'), Annual General Meetings, etc.

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## BANKING REGULATIONS

- The central bank of India - Reserve Bank of India ('R.B.I.') has reduced the Repo rate from 5.15% to 4.40%, the reverse repo rate from 4.90% to 4.00% and the Cash Reserve Ratio from 4.00% to 3.00% to infuse liquidity into the economy.
- The R.B.I. has permitted all commercial banks, Non-Banking Finance Companies and rural banks to grant a moratorium period of 3 months to all term loans (including agricultural loans). The moratorium period will apply to all payments relating to principal or interest, mortgage payments and credit card dues falling between 1 March 2020 and 31 May 2020. However, interest will continue to be charged during the moratorium period.
- In respect of working capital facilities such as overdrafts or cash credits, lenders have been permitted to defer the recovery of interest falling between 1 March 2020 and 31 May 2020.
- The R.B.I. emphasized that such rescheduling of payments between the moratorium period shall not affect the asset classification or the credit rating of the borrower to ensure that borrowers can "tide over the economic fallout due to COVID-19".
- The R.B.I. has notified that the limit for investment in corporate bonds by Foreign Portfolio Investments has been increased to 15% of outstanding stock for FY 2020-21. It also notified a "Fully Accessible Route" permitting non-residents to invest in Government securities with effect from 1 April 2020, without any quantitative limit.
- It is noteworthy that the R.B.I. did not delay the amalgamation schemes of Public Sector Banks, which will come into force with effect from 1 April 2020.

## OTHER MEASURES

- The Central (Federal) Government has approved a deduction of 30% in the salary of Members of Parliament for a period of one year beginning from 1 April 2020. The monetary savings will be deposited into the Consolidated Fund of India to fight COVID-19. The officers and staff of the Ministry of Finance, including the officials of Public Sector Banks have pledged to donate a day's salary, aggregating to INR 4,301 million (~US\$ 57 million), to the PM CARES Fund.
- The Indian Railways has successfully converted 2,500 coaches to fully equipped isolation centers. It has further supported the fight against the pandemic by running special "Parcel" trains for the transport of medical supplies and food. Similar transportation facilities have also been provided by the Indian Air Force.

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- The Employees' Provident Fund Organization ('E.P.F.O.') has released an online application form, using which, the members of the fund can withdraw 75% of the amount in their fund, restricted to a maximum amount of 3 months' wages.
- The Insolvency and Bankruptcy Board of India has increased the minimum amount of default by corporations to INR 10 million (~US\$ 0.13 million). It has further clarified that the period of lockdown shall not be counted in any timeline which is a part of the Corporate Insolvency Process.
- The Government has extended the date for renewal of third-party motor insurance and health insurance policies to 21 April 2020 for those policies expiring between 25 March 2020 and 14 April 2020.
- The Government has clarified that any disruption in supply chains with any country due to COVID-19 would be covered under "*Force Majeure*".
- The Life Insurance Corporation of India has clarified that claims relating to COVID-19 deaths will be processed at the earliest and such claims will not be excluded by covering them under "*Force Majeure*". Apart from this, the regulatory body for insurance companies, the Insurance Regulatory and Development Authority of India, has provided an additional grace period of 30 days for renewal of health insurance policies.

## RELIEF PACKAGE BY THE INDIAN GOVERNMENT

The Finance Minister announced a relief package of INR 1,700 billion (~US\$ 23 billion) to help the lower sections of society in fighting the battle against COVID-19, which includes the following:

- An insurance cover of INR 5 million (~US\$ 7,000) per health worker will be provided in the event of loss of life of any health worker on account of COVID-19 duty or while treating the COVID-19 patients. Approximately 2.2 million health workers are covered under this scheme.
- Approximately 800 million indigenous people will get specified quantities of wheat, rice, and pulses free of cost for a period of three months.
- Monetary assistance has been announced for farmers, construction workers, women who are bank account holders under a specified scheme of the Government, indigenous senior citizens, widows, and individuals with special needs.





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## INDUSTRY SPECIFIC REGULATIONS

### Petroleum, Oxygen, and Gas industry

- The Petroleum and Explosives Safety Organization and the Ministry of Commerce and Industry have issued various directions to ensure uninterrupted manufacturing, transportation, and storage of medical oxygen to hospitals and healthcare facilities.

### Power sector

- The Power Ministry and the Ministry of Railways and Coal have ensured around the clock supply of power to all consumers, considering that 70% of power generation is from coal-based power plants.
- Directions have been issued to the Central Electricity Regulatory Commission to grant a moratorium of 3 months to Distribution Companies to make payments to electricity generating companies without levy of any late payment surcharge.

### Pharmaceuticals sector

- The Department of Pharmaceuticals is working in close coordination with other ministries like the Ministry of Health and Family Welfare, Ministry of Commerce and Industry, Customs department, and Drug and Medical Associations to ensure regular manufacture, availability, and supply of medicines.
- Control rooms and helplines have been set up to ensure smooth communication with other departments to address various important issues arising from time to time.

### Agriculture sector

- Shops dealing in agricultural machinery, spare parts, and repair services will be allowed to remain open to facilitate transportation of farm produce. Tea plantations have also been permitted to function at a 50% capacity.

## MAY 12<sup>TH</sup> UPDATE

The Indian Prime Minister ('Indian P.M.')

addressed the nation once again on 12 May 2020, which was his fifth address in connection with the COVID-19 pandemic. A gist of the key issues discussed by the Indian P.M. is given below for your reference:

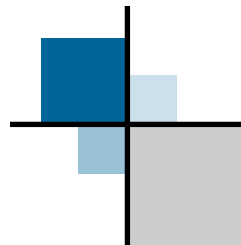


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1. The Indian P.M. announced a financial package of approximately USD 300 billion, the details of which are expected to be announced by the Finance Minister beginning from today. However, the Indian PM did mention that this package will have a special emphasis on land, labour, liquidity and laws. Accordingly, some bold reforms are expected to be announced shortly. Further, this economic stimulus is targeted at farmers, labourers, small businesses, Micro, Small and Medium Enterprises ('M.S.M.E.s'), cottage and rural industries and the middle class population.
2. The above package of USD 300 billion is nearly 10% of the Indian G.D.P. and includes the measures announced earlier by the Indian Government and the Reserve Bank of India (India's Central Bank).
3. The Indian P.M.'s speech was focused on the theme of a Self-Reliant India, founded on five pillars as under:
  - I. An economy poised for a quantum leap
  - II. Infrastructure
  - III. Technology driven systems
  - IV. A vibrant demography
  - V. Demand and supply chain
4. The Indian P.M.'s speech emphasised on local manufacture and local markets to meet local demand. In fact, he stressed that Indian consumers should be 'vocal about local'.
5. The current nationwide lockdown, which is in its third phase, is in force up to 17 May 2020. The Indian P.M. indicated the extension of this lockdown and mentioned that Lockdown 4.0 would be significantly different from the current situation with the easing of several restrictions, the details of which would be announced prior to 18 May 2020.



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## INDIA FIGHTS COVID-19 IN MATTERS IN ADDITION TO TAX

By Sakate Khaitan and Abbas Jaorawala

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Given these uncertain times during the COVID-19 pandemic across the globe, we can understand that the entire business community is anxious with this pending uncertainty.

As the pandemic causes havoc to global financial markets and balance sheets alike, even the Indian Government has introduced a slew of measures to try and contain the irreversible damage. The Government's measures include easing of company secretarial and tax related compliances as well as benefits in the form of disbursements of cash and food grains to the marginalized. The Indian central bank – Reserve Bank of India ("R.B.I.") also stepped in with monetary policy announcements, including a reduction in the repo rate as well as a three-month moratorium on term loan payments, aimed at battling the impact of economic slowdown.

Businesses too are looking at solutions to either delay or terminate obligations that may have cash flow implications. We trust this update will provide a clearer perspective of the general economy and policies in place from an Indian perspective. This article will address matters other than tax.

### CONTRACTS

#### *Force Majeure*

- Such clauses generally suspend or terminate a contract if a breach in performance occurs, due to events "outside the control" of the relevant contracting party.
- Indian Courts, following common law principles, have set out the following key rules for triggering a *Force Majeure* (F.M.) clause:
  - Clause needs to be strictly interpreted.
  - Mere inconvenience or adverse financial implications is not sufficient.
  - Serious hindrance to performance is required.

- Strict compliance on notice and other provisions is required.
- Words used on the clause are to be interpreted sui generis.
- Following the lead of the Chinese government, the Indian government has declared a blanket F.M. with respect to public procurement contracts. Such notification does not impact private contracts; however, we think subject to other criteria being met (please see above), this could be used to argue in favor of an F.M. even in private contracts.
- It is possible that continuance of F.M. may result in frustration of a contract. This is dealt with in greater detail below.

#### Doctrine of Frustration

- If a contract becomes impossible to perform due to the lock down/ travel restrictions declared by various governments, the contract becomes void.
- The consequence of the same is that any party that received any benefit under the contract is bound to restore the benefit.
- As example of such a contract will be the supply of good or services at a particular place and time (time being essence) requiring transportation/travel of goods or people and the same is impossible due to the lock down.
- Indian courts have held the doctrine of frustration to apply when it is clear that the intervening circumstances are such that it goes to the very root of the contract.
- Due to the requirement of returning all benefits on the contract becoming void, parties generally will seek to renegotiate rather than declare the contract void.

#### Material Adverse Change (MAC)

- MAC clauses are standard in the M&A world.
- An adverse impact on cash flow or financial health of the company will generally be covered in a properly drafted MAC clause.
- Generally, one will find language that says that investment/contract is contingent upon no MAC occurring.
- Given that the pandemic is likely to permanently damage earning capacity and financial health of a number of businesses, a MAC clause can be relied on to not make the agreed investment.

## INSURANCE

- We recommend a comprehensive review of all credit risk policies and its potential interface with declaration of *force majeure* event under a contract.
- Indian all risk policies generally do not cover business disruption. It is, however, worth looking at the policies to check on coverage.
- Remote working enhances cyber risk. Keeping your organization's cyber insurance policy under review is advised.
- Under all circumstances, businesses must ensure proper notifications to the insurers to avoid any complications at the time of payment of claims.

## REGULATORY INTERFACE & LITIGATION

- The Supreme Court extending limitation for filing claims will give relief to parties unable to commence proceedings due to the lock down.
- The government declared a two-quarter moratorium on late filing fee for all delayed filings on the website of Ministry of Corporate Affairs and several reliefs from potential company law violations.
- The threshold of default for corporate insolvency has been increased from INR 0.1 million to INR 10 million. Accordingly, even if the current situation will lead to a default, there has been some relief given to businesses, though in our view not sufficient.
- The government will also consider suspension of access to the Insolvency and Bankruptcy Code, 2016 for corporate insolvency, if the situation does not improve post 30 April 2020.

## EMPLOYMENT

- The Union Government and several state governments have issued advisories asking employers to allow employees to work from home.
- In several cities, it will not be possible for commercial establishments (offices and shops/retail outlets) to keep all employees gainfully employed at all times.
- It will be necessary that the employers assess their exposure in relation to:
  - Payment obligations to employees during the lockdown/shutdown
  - Risks arising from confidentiality, data protection, data breach/integrity arising due to work from home directives



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- Downsizing (retrenchment and/or lay-offs) or closure depending upon the extent of economic loss or prospect of recovery
- Review of disaster protocols to deal with pandemic like situations in future.

## GLOBAL MOBILITY

### Visas

- E-visa facilities currently suspended to several nationalities.
- Consular visa processing is also suspended across several Indian Consulates/Missions across the world, unless there is an urgent/emergency requirement for travel.
- Expatriates planning assignments/business visits to India have no option but to wait until the Indian Government announces further directives.

### International Travel to and from India

- The Government of India recently announced an international travel restriction (passenger commercial aircrafts) in India from 22 March 2020 to 29 March 2020, whereby no international passenger commercial flights will be permitted to take off or land in India. This restriction has now been extended until 14 April 2020, for any incoming international flights. Expatriates that were planning to exit India will be unable to do so until this ban is lifted or otherwise notified by the Government.

### Domestic Travel within India

- The Ministry of Civil Aviation, Government of India has also announced that the domestic schedule commercial airlines will also cease operations with effect from midnight on 24 March 2020 until 31 March 2020. Further directives on this will also be announced at the end of the month.

### Expatriates currently in India

- For those expatriates that are currently in India on assignment and require to extend their visas, they will be permitted to do so via the online Government portal. As the Foreigner Regional Registration Offices ("F.R.R.O.") are currently functioning at reduced capacity, it is highly recommended that all expatriates commence their renewal processes well in advance in order to avoid any untimely delays.
- Unless requested by the authorities and by prior appointment only, foreign nationals are restricted from visiting the F.R.R.O. until further notice.



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We anticipate any further updates on travel restrictions to and from India will be announced towards the end of the month.

We anticipate that there may be frequent updates from the Government over the next few weeks and we shall be sharing these updates as they come in.

If at all there are other issues that you or your businesses are dealing with that have not been considered in our update, please feel free to reach out to us. We are available to support you and be your partner in navigating these unprecedented times to ensure you are protected to the fullest and are able to dedicate your attention to more pressing matters.

### TAX

No discussion of relief measures would be complete without a brief reference to tax provisions.

#### Direct Tax

- Due date for filing income-tax return for the financial year 2018-19 (1 April 2018 to 31 March 2019) has been extended from 31 March 2020 to 30 June 2020.
- Deadline for paying taxes under the settlement scheme for income-tax disputes, without paying an additional 10% amount, has been extended from 31 March 2020 to 30 June 2020.
- Due dates for various actions under direct tax laws (income-tax, wealth-tax, income-tax dispute settlement law, etc.) which are expiring in the period 20 March 2020 to 29 June 2020 have been extended to 30 June 2020. This would include due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and also time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains.
- Penal interest applicable on delayed payment of direct taxes (withholding taxes, advance taxes, self-assessment taxes, etc.) during the period 20 March 2020 to 30 June 2020 will be computed at 0.75% p.m. instead of 1% p.m. or 1.5% p.m., as otherwise applicable. Late fee and penalty shall not be charged for delay relating to this period.
- The above measures have been currently announced through a press release and will be suitably incorporated in the law through issue of legal circulars and legislative amendments in due course.

### Indirect Tax

- Due date for filing GST annual return for the financial year 2018-19 has been extended from 31 March 2020 to 30 June 2020.
- Various tax returns under the Goods and Services Tax (GST) law falling due in the months of March, April and May 2020 would be permitted to be filed by 30 June 2020 without payment of late fees and penalty. In such cases, no interest would be charged for small dealers with aggregate annual turnover less than INR 50mn. For others, penal interest would be charged at 9% p.a. instead of the rate of 18% p.a. otherwise applicable under law.
- Deadline for making payment under settlement scheme for indirect-tax disputes has been extended till 30 June 2020 without charging any additional interest.
- Due dates for various actions under GST law which are expiring in the period 20 March 2020 to 29 June 2020 have been extended to 30 June 2020. This would include due dates for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents.

The above measures have been currently announced through a press release and will be suitably incorporated in the law through issue of legal circulars and legislative amendments.

### STRANDED VISITORS

India has been under a nation-wide lockdown since 22 March 2020 due to COVID-19 pandemic which has also resulted in cancellation of international flights. As the COVID-19 lockdown has extended over two financial years in India i.e. financial year 2019-20 (1 April 2019 to 31 March 2020) and financial year 2020-21 (1 April 2020 to 31 March 2021), questions have arisen on how the tax residency will be determined for individuals, who are as such non-residents, but are staying in India only due to these circumstances.

At the outset, it is important to note that an individual will be considered 'resident' in India under the Income-tax Act, 1961 ('the Act'), if:

- a) The Individual is in India for an aggregate period of 182 days or more in the financial year; or
- b) The Individual is in India for an aggregate period of 60 days or more in the financial year and the total stay in India in the preceding 4 financial years was 365 days or more.

For non-Indian individuals visiting India, both the above conditions need to be tested to determine their tax residential status in India. However,



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India

Indian citizens or persons of Indian origin, who are based outside India and visit India, will be treated as 'resident' in India only if they are in India for an aggregate period of 182 days or more in the financial year.<sup>1</sup>

Due to the COVID-19 lockdown, there could be cases where individuals may become 'resident' in India during financial year 2019-20 and 2020-21 on account of their involuntary extended stay in India. To address hardships of genuine cases, on receipt of representations, the Indian authorities have issued a Circular<sup>2</sup> on 8 May 2020. The Circular clarifies how the number of days of stay in India would be computed for the financial year 2019-20 in cases of Individuals who came to India on a visit before 22 March 2020. A summary of the same is as under:

Situation	Circumstances	Period of stay in India to be excluded:
1	Unable to leave India on or before 31 March 2020	22 March 2020 to 31 March 2020
2	Quarantined in India due to COVID-19 on or after 1 March 2020 and departed on an evacuation flight on or before 31 March 2020	From date of beginning of quarantine to date of departure
3	Quarantined in India due to COVID-19 on or after 1 March 2020 but unable to leave India on or before 31 March 2020	From date of beginning of quarantine to 31 March 2020
4	Departed on an evacuation flight on or before 31 March 2020	22 March 2020 to date of departure

Essentially, the Circular provides that based on the facts of the case, 1 to 31 days would be excluded (period between 1 March 2020 to 31 March 2020) while determining the tax residency of such individuals for financial year 2019-20.

Broadly speaking, the relief under this Circular would have to be considered as under:

Sr.No.	Particulars	Relief
1	Non-Indian individual visiting India for work	Depending on facts, 1 to 31 days of stay in India would be excluded while considering the residential status threshold of: <ul style="list-style-type: none"> <li>• 182 days stay in India in financial 2019-20; or</li> <li>• 60 days stay in India in financial 2019-20 if the stay in India for the financial years 2015-16 to 2018-19 was 365 days or more.</li> </ul>



Sr .No.	Particulars	Relief
2	Non-Indian individual visiting India for leisure (Assuming that stay in India for the financial years 2015-16 to 2018-19 would be less than 365 days)	Depending on facts, 1 to 31 days of stay in India would be excluded while computing the residential status threshold of 182 days stay in India in financial 2019-20.
3	Indian citizens or persons of Indian origin visiting India for work or leisure	Depending on facts, 1 to 31 days of stay in India would be excluded while computing the residential status threshold of 182 days stay in India in financial 2019-20

The Circular does not deal with determination of the residential status for the financial year 2020-21 (1 April 2020 to 31 March 2021). In this context, by way of a press release of 9 May 2020, the Indian authorities have clarified that while a suitable Circular shall be issued after international flight operations normalise, the period of stay of these individuals up to the date of normalisation of international flight operations will be excluded.

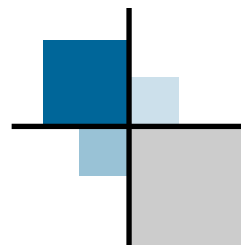
On a separate note, as per the Act:

- A firm is resident in India if even a part of its management or control is exercised from India.
- A foreign company is resident in India if its 'place of effective management' is in India.

It would be desirable that the tax authorities also clarify on the tax residency of such foreign entities in India if a part of their management or control has been exercised from India on account of the extended involuntary stay of its concerned decision maker, owner, etc. in India due to the lockdown.

<sup>1</sup> From 1 April 2020 onwards, separate residency conditions are provided for certain Indian citizens and Indian-origin individuals. Our notes on the impact of the updated residency provisions were circulated earlier.

<sup>2</sup> Circular No. 11 of 2020 dated 8 May 2020 issued by the Central Board of Direct Taxes (CBDT)



**COVID-19**

RELIEF ACROSS THE WORLD

Japan



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## ACTIONS WITH TAX IN JAPAN TO COPE WITH COVID-19 PANDEMIC

By Jun Nagamine

*Nagamine & Mishima Consulting (Japan)*

To relieve taxpayers in Japan in the midst of various agony caused by COVID-19 pandemic, the director of National Tax of Japan announced on 6 March 2020, the deferral of the due date of filing several tax forms. The general period of deferral is one month. The deferral applies to individual income tax returns and covers the due date for tax payments. Several tax grants have been announced, as well.

### INDIVIDUAL TAX

#### Due Date of Filing and Tax Payment

The due dates for filing the tax return form and for ordinary tax payment have been deferred to 16 April 2020. This restatement of due date is applied automatically to every taxpayer. No further action with local tax offices is required. Also deferred to 16 April 2020 is the due date for the Foreign Assets Report and the Assets & Liabilities Report.

The due date of filing other tax related forms has been suspended to 16 April 2020, also<sup>1</sup>. These forms are listed in the following table:

Division	Procedure name
Income tax related	Income tax and special income tax for reconstruction
	Request for correction of income tax and special income tax for reconstruction
	Blue income tax return approval application
	Blue business full-time employee salary notification (change notification)
	Notification of withdrawal from income tax blue tax return
	Claim for income tax refund by carrying back net loss amount
	Report of depreciation method of depreciable assets of income tax
	Application for approval of change in depreciation method for income tax depreciable assets



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Japan



Division	Procedure name
Income tax related	Notification of income tax securities and virtual currency
	Application for approval of change in valuation method for
	Notification of opening and closing of private businesses
Gift tax related	Gift tax filing
	Request for gift tax rectification
	Notification of tax payment at inheritance
Consumption tax (individual) relations	Tax return for consumption tax and local consumption tax
	Request for correction of consumption tax and local con-
Other	Submission of foreign assets report
	Submission of assets and liabilities report

#### Due Date for Automatic Transfer Payment

	BEFORE	DEFERRED TO
Individual Income Tax	21 April 2020	15 May 2020
Consumption Tax of Sole Proprietary	23 April 2020	19 May 2020

The automatic transfer system is available only for Income Tax and Consumption Tax, both for Individual. For these taxes, an application form must be submitted to the local tax office prior to each due date in order to activate the auto transfer.

#### Due Date for Income Tax Return for a decedent

The due date of the income tax return for the year of the decedent's death is suspended to 16 April 2020. Payment of the tax is also deferred.

#### Exceptions to Deferral of Due Date

The due dates for the income tax issues below are not deferred.

- Individual income tax return for the year of relinquishment of Japanese residence. The due date is not later than the date of immigration

## Japan



- Application for reduction on income tax prepayment. This form must be filed by 15 July 2020, or 16 November 2020.

### CONSUMPTION TAX

The due dates of filing and payment for consumption tax of sole proprietor are deferred to 16 April 2020. Deferral is not applicable to specific notifications or to report a change in consumption tax status.

### WITHHOLDING TAX

The due date for every withholding tax imposed on a sole proprietor is not deferred by this measure. However, a special deferral may be granted for good cause. A timely application is required in these cases.

Examples of good cause include the following facts.

- The taxpayer or relevant accounting staff has been infected or has had contact with anyone contagious.
- An outside accountant retained for preparation of the form has been infected.
- The taxpayer is present in a country outside of Japan and is travel is restricted from that country.
- The COVID-19 virus has prevented the ordinary operation of management functions.
- Accounting staff members are absent from work because they are parents to children whose schools have closed because of the COVID-19 virus.
- The business has cancelled its annual meeting because of the COVID-19 virus.
- The taxpayer has been ordered to shelter at home by the Sanitary Department or any medical facilities because of the doubtfulness of contagion.

### INHERITANCE TAX

Though the due date for inheritance tax is not suspended in public, a special allowance of suspension would be granted to you if you have some good causes which hinder your tax filing and tax payment in time.



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RELIEF ACROSS THE WORLD

## Japan

No preliminary action is required, but just put the words “Application of suspension of filing and payment caused by novel corona virus” on the first page of your inheritance tax form package.

### LOCAL TAX

A taxpayer can apply for an extension in relation to each local tax, such as inhabitant tax on individuals, fixed assets tax (property tax). The extension may be granted if the delay results from good cause that that prevents timely payment. A timely application to the local tax department is required.

### CORPORATE INCOME TAX

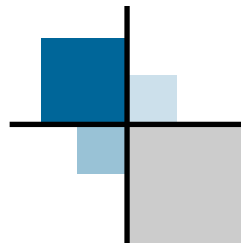
Though the due date for corporate income tax is not suspended, a special allowance of suspension would be granted if you or your corporation have some good causes which hinders your tax filing and payment in time. No preliminary action is required, but just put the words “Application of suspension of filing and payment caused by novel corona virus” on the box of corporate name on the first page of your corporate tax form package.

But, as for the deferral for Business Tax filings and payments imposed by local prefectures including Tokyo, you need to submit an application form no later than 45-days after the end of the fiscal year of the corporation, to the prefectural tax office.

<sup>1</sup> <https://www.nta.go.jp/taxes/shiraberu/shinkoku/kansensho/tetsuzuki.htm>.

The contribution of the following person is acknowledged:

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**COVID-19**  
RELIEF ACROSS THE WORLD

Singapore



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## SINGAPORE COVID-19 SUPPORT MEASURES AND TAX GUIDANCE

By Sunil Iyer  
*IQ-EQ (Singapore)*

In light of the global COVID-19 outbreak, a series of support measures have been introduced to help businesses and individuals ease their cash flow.

### Support for Companies

An automatic deferral of Corporate Income Tax (C.I.T.) Payments has been implemented. All companies with C.I.T. payments due in the months of April, May and June 2020 were granted an automatic three-month deferral of payments. The C.I.T. payments that are deferred from April, May and June 2020 will be collected in July, August and September 2020 respectively.

### Property Tax Measures

Non-residential properties will be granted property tax rebate for the period 1 January 2020 to 31 December 2020. Commercial properties badly affected by COVID-19, such as hotels, service apartments, tourist attractions, shops and restaurants, will receive a 100% property tax rebate. Other nonresidential properties such as offices and industrial properties will receive a 30% property tax rebate.

### Enhanced Jobs Support Scheme (J.S.S.)

The J.S.S. will provide wage support to employers to help retain employees during this period of economic uncertainty. Eligible employers will receive a 75% cash grant (up from 8%) on the gross monthly wages of each local employee (Singapore Citizens and Permanent Residents), subject to a monthly wage cap of S\$4,600 (approximately €2,975 at current exchange rates) per employee, for April and May 2020. Employers do not need to apply for the J.S.S.. The grant will be computed based on C.P.F. (similar to social security) contribution data.

## I.R.A.S. TAX GUIDANCE ON CIRCUMSTANCES ARISING OUT OF THE CORONAVIRUS

### Tax residence status of a Company

Even if a company is not able to hold its board of directors meeting where strategic decisions are made in Singapore due to travel restrictions relating

**COVID-19**  
RELIEF ACROSS THE WORLD

Singapore



to COVID-19, I.R.A.S. may consider the company as a Singapore tax resident for assessment year 2021, provided it meets the following conditions:

- The company is a Singapore tax resident for assessment year 2020
- There are no other changes to the economic circumstances of the company and
- The directors of the company attend the board of directors meeting held outside Singapore or the meeting is held via electronic means because the directors are temporarily restricted in their travel as a consequence of COVID-19.

Conversely, where a company is not a tax resident of Singapore for assessment year 2020, I.R.A.S. will continue to consider the company as a non-resident for assessment year 2021, provided it meets the following conditions:

- The company holds its Board of Directors meeting in Singapore due to the travel restrictions relating to COVID-19 and
- There are no other changes to the economic circumstances of the company.

To support the claim that the company should continue to be treated as a tax resident or nonresident of Singapore, the company should keep relevant documentations and records (e.g. board minutes stating why the directors were attending board meetings from their respective locations), and to provide the relevant information to I.R.A.S. upon request. Similarly, where a company is not a tax resident of Singapore for assessment year 2020, I.R.A.S. will continue to consider the company as non-resident for assessment year 2021, provided it fulfills specified conditions.

#### Permanent Establishment

According to published material on the I.R.A.S. website, if employees of foreign company remain in Singapore due to travel restrictions relating to COVID-19, I.R.A.S. may not consider such stay as creation of permanent establishment in Singapore, provided the conditions are met.

- The foreign company did not have a permanent establishment in Singapore for assessment year 2020
- There are no other changes to the economic circumstances of the company
- The unplanned presence of the employees in Singapore is due to travel restrictions relating to COVID-19 and their physical presence in Singapore is temporary, which, as a guide, means generally not more than 183 days in assessment year 2020 from the date of first arrival in Singapore





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RELIEF ACROSS THE WORLD

## Singapore



- The activities performed by the employees during the unplanned presence would not have been performed in Singapore if not for the travel restrictions.

To support the claim that there is no permanent establishment in Singapore, the company should keep relevant documentations and records, and to provide the relevant information to I.R.A.S. upon request.

### Individuals

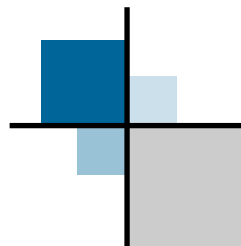
According to published material on the I.R.A.S. website, individuals exercising overseas employment but now working remotely from Singapore due to COVID-19, may not be considered as exercising an employment in Singapore, and not taxable in Singapore, provided the following conditions are met:

- The period of the extended stay is not more than 60 days and
- The work performed during the extended stay is not connected to the business assignment in Singapore and would have been performed overseas if not for COVID-19.

If all the conditions are met, the employment income for the period of your extended stay in Singapore will not be taxable. Note, however, that if an individual is given another business assignment relating to Singapore business during the extended stay, the employment income for the period of the whole stay in Singapore for both assignments will be subject to normal tax rules.

### ENHANCED FINANCING SUPPORT

The Singapore Government announced enhancements to existing schemes that were directed to locally owned small and medium size entities. This includes enhancements to existing Work Capital and Trade Finance Loans in amounts up to S\$1m (approximately €647,000 at current exchange rates). The Temporary Bridging Loan Program (T.B.L.P.) was expanded to cover all sectors of the economy rather than solely focused on the tourism sector, as was previously the case. The maximum loan quantum was enhanced to S\$5 million (approximately €63,237,000 at current exchange rates) per borrower group.



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RELIEF ACROSS THE WORLD

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# AFRICA

## HIGHLIGHTS OF THE COVID-19 TAX MEASURES \*

By Daniel Ngumy and Kenneth Njuguna  
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### IN GENERAL

On 25 March 2020 President Uhuru Kenyatta announced a number of measures designed at cushioning Kenyans from the impact of COVID-19.

Following the declaration by the World Health Organization ("W.H.O.") categorizing COVID-19 as a pandemic, it was necessary for the Government to make targeted state interventions to mitigate shocks arising from the impact of the pandemic and to empower the public and private sectors to work together to support the Kenyan economy during these tough times.

The National Treasury was directed to implement several immediate relief measures geared at individual taxpayers, businesses, and investments with a view to increasing disposable income of the people of Kenya in general. The measures appear to go beyond those which have been introduced to date by other East African governments. The Ugandan and Rwandan Governments have so far announced various tax measures to combat COVID-19.

In order to implement the measures declared by the President, we expect that the Government will issue a special tax amendment statute which will introduce these measures. The changes will necessitate an amendment of the provisions of the Income Tax Act and the Value Added Tax Act. We expect that the Government will shortly issue a Tax Amendment Bill which will set out these changes.

## Kenya

It is unclear what the enactment process will be, noting the fact that Parliament is in recess at the moment as a result of the COVID-19 pandemic. That is an issue because the High Court in the case of *Okija Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others*, Petition No. 253 of 2018 declared that the Provisional Collection of Taxes and Duties Act (the “P.C.T.D.A.”), which allowed for tax measures to be introduced through a Bill prior to its enactment into an Act, was null and void. The High Court stated that:

\* \* \* the Finance Bill 2018, or any parts or provisions thereof, including on taxation, cannot be implemented before the Bill becomes the Finance Act after it goes through the parliamentary legislative process laid out in the Constitution for approval and adoption by Parliament, and assent by the President.

Based on this decision, and except as set out below, it would appear that the measures can only enter into force once the Tax Amendment Bill has been enacted into law by Parliament after it is convened and on such terms as the prevailing pandemic situation may allow. Had the P.C.T.D.A. still been in force, a mechanism would have existed for the Government to implement all the tax measures immediately and without the need for parliamentary intervention in advance of enactment of the statute.

As will be noted below, the President has directed that the National Treasury reduce the rate of V.A.T. from 16% to 14%, with effect from 1 April 2020. Section 6(1) of the Value Added Tax Act specifically empowers the Cabinet Secretary by an order published in the Kenya Gazette, to amend the rate of tax by increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five % of the prevailing rate. The proposal to reduce the V.A.T. rate to 14 % is therefore well within the power of the Cabinet Secretary to amend, and we would expect that a Gazette Notice to this effect will be published imminently.

Additionally, offsetting of V.A.T. refund claims against tax liabilities owed by the taxpayer under any other tax law is allowed upon application pursuant to section 47 of the Tax Procedures Act. The grant of approval is conditional upon the Commissioner being satisfied that the refund is due. On this basis, it would appear that the process will be expedited, provided that the V.A.T. refunds have been verified.

### HIGHLIGHTS

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RELIEF ACROSS THE WORLD

Kenya

The comments highlighted in this alert are based on our preliminary views following the President’s news briefing. Once the Tax amendment statute has been published, we will issue a more comprehensive alert that may include items that were not reflected in the President’s address.

**Tax Measures**

- **Pay As You Earn (“P.A.Y.E.”).** P.A.Y.E. is charged on a graduated scale at the rate of between 10 % to 30 %. To cushion employees from the impact of COVID-19 and increase disposable income, the President has directed that income of KES 24,000 (approx. US\$225) or less be exempt from P.A.Y.E. In addition, the top P.A.Y.E. rate of 30% will be reduced to 25%. This is a welcome move which will increase disposable income and cushion employees in the event of salary reductions.

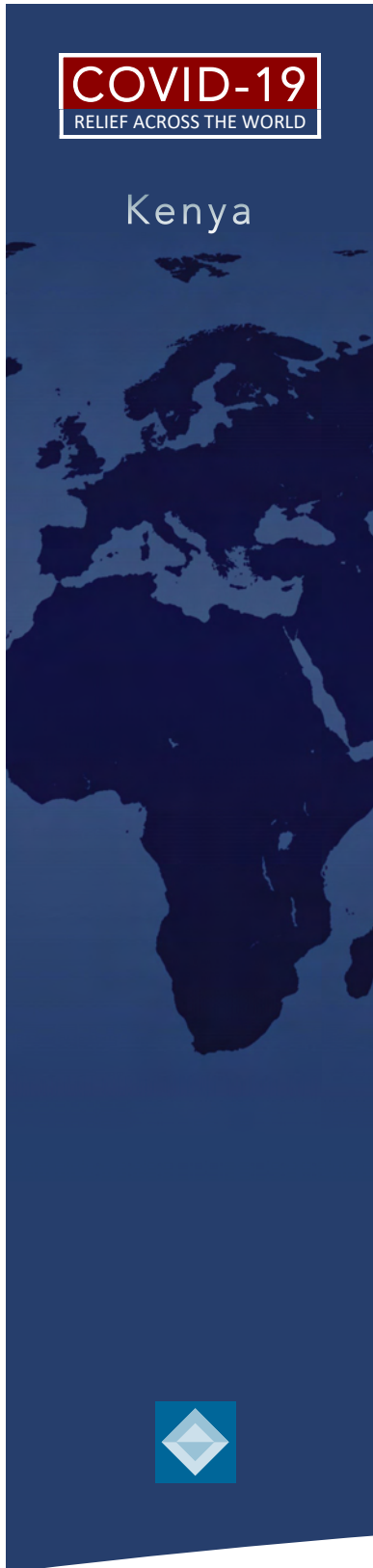
Monthly Taxable Pay (KES)	Annual Taxable Pay (KES)	Current Rate of Tax	New rate of Tax as proposed in the President’s address
Up to 12,298	Up to 147,580	10%	0%
12,299 to 23,885	147,581 to 286,623	15%	0%
23, 886 to 35,472	286,624 to 425,666	20%	20%
35,473 to 47,059	425,667 to 564,709	25%	25%
Above 47,059	Above 564,709	30%	25%

Please note that those who earn up to KES 24,000 will be exempted from P.A.Y.E. and therefore this band will not apply for the first KES 114 (i.e. up to KES 24,000).

- **Corporation tax.** The standard rate of corporation tax has been reduced from 30% to 25%. It is not known yet whether companies which are yet to pay the balance of tax for the year 2019 can apply the reduced corporate tax rate of 25%. The balance of 2019 tax is due at the end of April for companies with a December year end. This new corporate tax rate will enhance cash flows for companies on payment of instalment taxes and balance of tax for the 2020

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Kenya



financial year. As noted on the A.L.N. Covid Hub Tax F.A.Q.'s, companies using the instalment tax regime should consider adopting the current year basis of computing instalment taxes, should it be apparent that profitability in the current year will be significantly lower than that of prior year.

- **Turnover tax ("T.O.T.").** T.O.T. at the rate of 3% was re-introduced by the Finance Act 2019 and is payable by any resident person whose turnover from business does not exceed or is not expected to exceed KES. 5,000,000 during the annual tax period. The T.O.T. rate has been reduced from 3 % to 1 %.
- **Value Added Tax ("V.A.T.").** The following V.A.T. measures have been introduced by the President:
  - *Reduction in the V.A.T. rate:* V.A.T. at the rate of 16% is applicable on taxable goods and services provided by a registered person in Kenya. The President has directed that the standard V.A.T. rate be reduced to 14% with effect from 1 April 2020. This is a very welcome move that cushions taxpayers from the cash flow impact associated with monthly V.A.T. payments.
  - *Immediate release of V.A.T. refunds:* The President has directed the Kenya Revenue Authority to release verified V.A.T. refunds of approximately KES 10 billion (approx. US\$95 million) within a short period or to allow the outstanding V.A.T. refunds to be offset against V.A.T. withheld by appointed withholding V.A.T. Agents. Withholding V.A.T. agents are required to withhold V.A.T. at the rate of 2% and remit the V.A.T. withheld to the Kenya Revenue Authority on a monthly basis. This is a welcome move and will significantly enhance cash flow for businesses, especially those engaged in exports and which are currently facing cash flow constraints due to reduced global demand for most commodities.

**Non-Tax Measures**

The President has also directed that the following measures be implemented immediately to enhance healthcare services, cushion the vulnerable in society, and improve liquidity:

- Appropriation of KES 1 billion (approx. US\$9.5 million) from the Universal Health Coverage kitty, towards the recruitment of additional health workers to help curtail the spread of COVID-19.
- Voluntary reduction of salaries of top Government officials by between 80% and 20%.

**COVID-19**  
RELIEF ACROSS THE WORLD

Kenya



- Directing all Government Ministries and Departments to release pending payments of at least KES 13 billion (approx. US\$122 million) to suppliers within a short period.
- Temporary suspension of negative listings with the Credit Reference Bureau effective 1 April 2020 for borrowers whose loans fall overdue or are in arrears.
- Appropriation of an additional KES 10 billion (approx. US\$9.5 million) to the elderly, orphans and other vulnerable members of society through cash-transfers by the Ministry of Labor and Social Protection.
- Directing Government employees aged 58 years and above serving in Job Group S and below or their equivalents to be allowed to take leave or work from home.

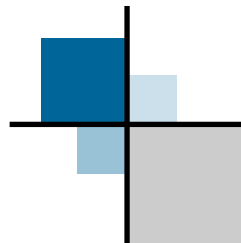
The measures set out above are in addition to the following emergency measures introduced by the Central Bank of Kenya on 24 March 2020:

- Lowering of the Central Bank Rate to 7.25% from 8.25%, which is expected to enable commercial banks to lower the interest rate to borrowers on new and existing credit facilities.
- Reduction of the Cash Reserve Ratio to 4.25% from 5.25%, which is expected to provide additional liquidity of KES 35 billion to commercial banks to directly support borrowers that are distressed as a result of the economic effects of COVID-19.
- Flexibility to banks in relation to statutory requirements for loan classification and provisioning for loans classified as performing at 2 March 2020 and whose repayment period is extended or restructured as a result of COVID-19.

\* This article is based on material that appeared originally on the A.L.N. website.

Original document can be found at:

[africalegalnetwork.com/legal-alert-highlights-covid-19-tax-measures/](http://africalegalnetwork.com/legal-alert-highlights-covid-19-tax-measures/)



**COVID-19**  
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# EUROPE

## AUSTRIA \*

By Dr. Niklas Schmidt

*Wolf Theiss Attorneys at Law (Austria)*

To date, the Austrian legislator has passed five extensive omnibus acts containing various emergency measures in connection with the COVID-19 crisis. Additionally, the Austrian federal government has enacted certain regulations based on statutory law, and a number of government agencies have issued guidance on some questions of the application of law in light of the pandemic. The changes are massive, and all areas of the law are affected. The following are the most important tax related measures:

- A statutory interruption of deadlines regarding appeals in tax matters and in criminal tax matters has been introduced. Deadlines which that commenced on or after 16 March 2020 and deadlines which were still open on 16 March 2020, have been deferred and will start anew on 1 May 2020. The tax authority can, however, pronounce that a specific deadline will not be interrupted. In those cases, the government must set a new reasonable deadline.
- Oral hearings in tax matters and in criminal tax matters are to be carried out only if absolutely necessary. Where carried out, the hearings must be conducted using suitable digital means of communication.
- Certain subsidies from public bodies which are granted to taxpayers in connection with the COVID-19 crisis have been exempted from income tax.
- Bonuses which are granted by employers to their employees in the year 2020 in connection with the COVID-19 crisis have been exempted from income tax up to an amount of €3,000. To be exempt, the bonuses must be granted over and above normal payments. This is a one-time benefit. Once a €3,000 bonus payment has been received, subsequent bonuses are fully taxed.
- An amendment has been introduced allowing taxpayers maintain entitlement to a commuting allowance during periods of temporary

**COVID-19**  
RELIEF ACROSS THE WORLD

## Austria

short-term work, work at home, or absence from work due to the COVID-19 crisis.

- An exemption from stamp duty has been introduced covering certain transactions and certain filings carried out in connection with the COVID-19 crisis.
- A reimbursement has been introduced for alcohol tax levied where the alcohol is used to manufacture disinfectants.
- The reform of the organizational structure of the Austrian tax administration has been postponed until 1 January 2021. It was scheduled to enter into force on 1 July 2020.
- The Austrian Ministry of Finance has published guidance pursuant to which the tax authorities will allow a reduction of income tax and corporate income tax prepayments for the year 2020 upon the plausible request of a taxpayer affected by the COVID-19 crisis. Should the final tax payable be greater than the prepayments, no interest will be charged. In addition, a tax office may grant an interest-free deferral of taxes payable or the interest-free payment of tax installments until 30 September 2020. Finally, the due date for income tax returns and corporate income tax returns for 2019 has been deferred until 31 August 2020, with a possibility of further extensions. In the absence of the extension, tax returns would generally be due by 30 June 2020.
- The Austrian tax authorities have entered into a mutual agreement with German counterparts regarding certain provisions applicable to employees. For purposes of Article 15, paragraph (1) of the double tax treaty, days spent by a taxpayer working at home due to COVID-19 measures will be deemed to count as days spent working in the other contracting state, if the taxpayer would have gone there to work without the measures being in place. Moreover, for purposes of the frontier worker rule contained in Article 15, paragraph (6), days spent by a taxpayer working at home due to COVID-19 measures are not counted as days of non-return, provided those days would not have been spent working at home in ordinary circumstances.
- Finally, pursuant to a bill being currently discussed in the Austrian Parliament, supplies of protective masks carried out after 13 April 2020 and before 1 August 2020, will be exempted from value added tax.

\* This article is based on material that appeared originally on the Wolf Theiss website.

Original document can be found at:

[wolftheiss.com/covid19/austria/](http://wolftheiss.com/covid19/austria/)



**COVID-19**  
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Bulgaria



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## STATE OF EMERGENCY BUSINESS MEASURES COVID-19 \*

By Jivko Ivanov  
*Simbula Ltd. (Bulgaria)*

A summary of the emergency regulations issued by the Bulgarian public entities, regarding tax, labor and compensation legislation as of 27 March 2020.

### INTRODUCTION

On 24 March 2020, the “Measures and Actions During the State of Emergency Act” was promulgated in the State Gazette and entered retroactively into force as of 13 March 2020.

On 25 March 2020, the Government determined that more than BGN 2 billion (€1.02 billion) would be allocated from the budget for economic measures:

- The Prime Minister has announced that over 60% of the employee’s remuneration in the affected sector will be covered by BGN 1 billion state funding.
- The capital of the Bulgarian Development Bank (B.D.B.) will be increased by BGN 500 million (€255 million) to guarantee loans taken by companies from private banks.
- BGN 200 million (€102 million) from B.D.B. through commercial banks will be given for unsecured consumer loans up to BGN 1,500 (€765) for furloughed employees who are on unpaid leave.
- BGN 500 million (€255 million) for remuneration of health officials, police and military.

### V.A.T. AND OTHER TAX PAYMENTS

Will the deadline for V.A.T. declaration and payment be changed?

No. The deadline for declaration and payment of V.A.T. will not be changed according to the National Revenue Agency.

## Bulgaria

If the corporate tax declaration has already been filed, can the payment date be deferred?

*Yes, the payment date for corporate tax will be extended for those who have already submitted the annual declarations.*

Will the date for declaring and paying national taxes and social security contributions during the state of emergency be deferred during the state of emergency?

Yes, there will be deferrals for declaring and paying national taxes and social security contributions as follows:

- The deadline for filing corporate tax declarations has been extended until 30 June 2020.
- The deadline for payment of corporate tax has been extended until 30 June 2020.
- For 2020, advance payments based on the estimated tax profit for 2020 are made, taking into account the following features:
  - If the annual tax declaration for 2019 has already been submitted, adjustments to the amount of the advance payments by 15 April 2020 should be made by the declaration.
  - If the annual tax return for 2019 was not submitted by 15 April 2020, it must be submitted by that date, by submitting only portion related to advance contributions. Adjustments to the amount of the advance contributions are made by the declaration.
  - Adjustments to the advance contributions made by the declaration can be used after submission of the declaration.
- The deadlines for the advance payments for 2020 are as follows:
  - The monthly advance payments for the first quarter (January, February and March) of 2020 are due by 15 April 2020.
  - The monthly advance payments for the months from April to December 2020, are due by the 15th day of the month to which they refer.
  - The quarterly advance payments for the first and second quarters of 2020 are due by the 15th day of the month following the quarter end.
  - No quarterly advanced payment is made for the fourth quarter.

## Bulgaria

- The deadline for the submission of the Annual Activity Statement (A.A.S.) has been extended to 30 June 2020.
- The deadlines for declaring and paying various miscellaneous tax, such as the tax on expenses under the Corporate Tax Act, the tax on the revenues of budgetary enterprises, the tax on certain income under the Gambling Act, and the tax on the operation of ships have all been deferred until 30 June 2020.
- The deadlines for filing the annual income tax declaration for natural persons engaged in business as sole proprietors, including farmers, has been deferred to 30 June 2020.

During the state of emergency all enforcement activity under the Tax and Social Insurance Procedure Code are suspended. However, interest on underpayments continues to accrue. In addition, tax liabilities can be secured enforcement proceedings. Taxpayers wishing to make payment can authorize a transfer of receivables, cash in banks, receivables, and contents of value in vaults and safes. However, there will be no public auctions and no takeover proceedings.

In addition, no enforcement cases can be originated by public bailiffs except in particularly important cases.

### JOB RETENTION PROGRAM

#### Overview

The goal of the job retention schemes is that the state is covering 60% of the remunerations of employees who would otherwise lose their jobs. This will be covered, through the "Unemployment Fund." In return for this funding, employers are obliged to retain their employees and cover the remaining 40% of the remuneration.

To be eligible for the benefits, a company must have reduced its headcount by 50% or more from the employee headcount on the date the state of emergency was declared and a shelter-in-place order was issued. At least 50% of the covered employees must work in one of 19 identified economic activities listed in the order.

Applicants for relief must not have made redundancies throughout the period in which compensation is received. That period lasts up to three months and the decree retroactively came into effect as of 13 March 2020. If the company wants full compensation, it must retain staff for three months from that date. Companies should be up to date with

## Bulgaria

regard to taxes and social security contributions, should not already be in receipt of emergency funding from European programs or from the national budget in Bulgaria, and should not have committed any breach of the labor legislation.

No requirement exists under which 50% or more of the employees must be engaged in the activities concerned. Similarly, there is no obligation for the employees to remain employed for three months thereafter.

### Labor Sectors of Workforce

Companies with employees working in the following sectors may qualify for relief under this program:

- Big shopping center retailers other than food, beverage, tobacco, motor vehicles and motorcycles retailers
- Different types of passenger transport
- Hotels and other similar accommodation
- Tourist and other short-term accommodation
- Restaurants and fast food establishments
- Drinking establishments
- Movie projection
- Travel agency and operator activity; other travel and booking activities
- Artistic and creative activity
- Other cultural activities
- Sports and other activities related to leisure and recreation
- Maintaining good physical condition.
- Manufacturing, except tobacco, coal mining, refined petroleum products, chemical products, pharmaceuticals and computer equipment
- Construction
- Non-shopping center retailers other than food, beverage, and tobacco retailers
- Publishing activity
- Public Relations
- Advertising and sociological agencies.

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Both local and foreign enterprises may qualify for the relief. In particular employees on the payroll must work in one or more of the 19 sectors and economic activities. The applicant must have no tax obligations or mandatory social security contributions remaining unpaid at the time of the application and have not been declared bankrupt or are not in bankruptcy or liquidation proceedings. Employee headcount must remain employed for the entire period in which relief is received. If employees are furloughed, the period of furlough cannot last more than 15 days. Finally, the applicant must not have been found by a court to have violated applicable labor legislation.

### Application Process

Applications for relief are submitted to the state employment offices. Applications should be accompanied by the following documents:

- An order direct to the employer to discontinue work under due to the state of emergency.
- A declaration that the applicant will maintain employment in the enterprise and that it will not dismiss employees for the period in which relief will be received.
- A list of workers whose salaries will be funded under the 60/40 formula.
- The applicant's bank account with IBAN information.

A template is provided for required declarations. The approval process is relative short, and decisions are expected to be made within two working days for the submission of the application packet.

### EMPLOYMENT LEGISLATION

During the State of emergency, amendments to the Labor Code require the employer to continue to pay compensation to employees during the suspension of the work processes. Nonetheless, the employer will retain the right to unilaterally take certain actions. It may assign the employee to work remotely. An explicit written order is required that specifies the new working conditions, such as the work, remuneration, and related specifications. In addition, the employer may establish part-time working hours for employees working full time, provided that the number of ours cannot be reduced by more than 50%. Finally, the employer may require employees to take paid annual leave during the emergency period.

## SOCIAL SECURITY

The time limits for the payment of compulsory social security contributions by insurers will not be modified in order to preserve the rights of the persons insured and to guarantee the timely payment of the insurance benefits that become due, including pensions and temporary disability benefits and unemployment benefits.

The payment deadlines and the monthly advance contributions by the self-insured persons remain unchanged. The final social security contributions are paid by self-insured individuals on or before the deadline for filing the annual tax return under the Personal Income Tax Act.

## BUSINESS RATES HOLIDAYS

Certain enforcement actions are suspended. As a result, interest and penalties, mandatory early payment, contract termination and seizure of property are suspended until the state of emergency is lifted. Enforcement measures under the Tax and Insurance Procedure Code are suspended, but the actions carried out remain valid.

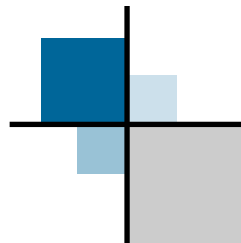
In the case of private law obligations, all announced public sales and holdings have been suspended. No account preservation orders may be imposed on bank accounts of individuals, salaries, and pensions. No court orders may be obtained to require an inventory of property for businesses or individuals.

Managing authorities of European Structural and Investment Funds shall have the right to unilaterally amend agreements and to sign new ones under simplified rules, including without the publication of a call for proposals.

\* This article is based on material that appeared originally on the Simbula website.

Original document can be found at:

[simbula.eu/en/cov19-4/](http://simbula.eu/en/cov19-4/)





ALEXIS  
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## MAIN CYPRUS MEASURES IN RESPONSE TO COVID-19

By Alexis Joannides

*Joannides & Co. (Cyprus)*

The Cyprus government has made several announcements in the past few weeks relating to various measures taken in response to the COVID-19 outbreak. Below is a list of the main measures with brief descriptions.

### TAX MEASURES

#### V.A.T. measures

- Temporary suspension of the obligation to pay V.A.T. for reasons of business liquidity, without the imposition of any penalties and interest for the periods ending 29 February 2020, 31 March 2020 and 30 April 2020, until 10 November 2020, provided that the relevant V.A.T. returns are submitted within the prescribed deadlines.

#### Direct taxation

- Extension of the deadline for submission of tax returns from 30 March to 1 June 2020.
- Deadline for settlement of 2018 tax liabilities extended to 1 June 2020.
- Law for settlement of overdue taxes has been amended on 14 February 2020, and tax returns up to and including 2015 may be submitted up to 30 June 2020 in order to qualify for a payment plan. The number of instalments that may be missed without resulting in the cancellation of the payment plan has been increased from three to five.

#### Merchant Shipping Law 2010

- Extension to the date of payment of the Cyprus Registry Maintenance Annual Fee and the tonnage tax of Cyprus ships from 31 March 2020 to 31 May 2020.

#### Import duties and V.A.T. exemption

- The European Commission has decided on 3 April 2020 to grant relief from import duties and V.A.T. exemption on importation of goods needed to combat the effects of the COVID-19 pandemic. The relief applies to importations made from 30 January 2020 to 31 July 2020 by or on behalf of State organizations including State bodies, public bodies and other bodies governed by public law or by or on behalf of other approved by the competent authority organizations, and which will be used free of charge by the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak.

## BUSINESS & OTHER MEASURES

### Social insurance benefits provided include

- Special unemployment benefit to employees under the Plans for the Complete or Partial.
- Suspension of Business operations.
- Special sickness benefit.
- Special leave for the care of children.
- Special leave for individuals included in vulnerable population groups.

The Minister of Labor, Welfare and Social Insurance will assess during the period from 16 March 2020 to 16 May 2020, the conditions, the amount and the way in which such benefits will be granted.

### Settlement of overdue contributions to social insurance

- Payment of the instalments for the months of March and April 2020 will be suspended and the deadline for settlement is extended by two months for liabilities to social insurance related funds for which a repayment plan was active by 1 March 2020.

### General Healthcare System

- The increase in special contribution to the General Healthcare System is suspended for three months.
- The suspension will apply for the months of April, May and June 2020.
- For the month of March 2020, the increased contribution rates will apply.





#### Amendment to the Statutory Tenants Law

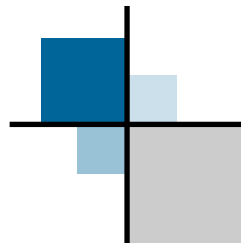
- Any eviction process shall be suspended (and new eviction orders will not be issued) until 31 May 2020.
- The law only applies to premises built before 31 December 1999.
- The suspension of the eviction does not affect the right of the owner to bring legal action after 31 May 2020 against the tenant for the unpaid rents during the period March – May 2020 (tenants remain fully liable to pay the rent for the months of March, April and May).
- The suspension of eviction does not apply to tenants who have defaulted on payment of rents until 29 February 2020.

#### Postponement of Excise Duty Payment

- It relates to the payment of excise duty payable in accordance with the provisions of the Excise Tax Act 2004, for energy products, tobacco products and alcohol and alcoholic beverages, subject to the terms and conditions.
- A person qualifies for the postponement if his/her business activity is the production, importation or acquisition from member states of excise goods, with an annual turnover exceeding €3,500,000, and paying excise duty through the THESEAS system.
- An application should be submitted and the Minister of Finance may extend the deadline for payment of the deferred amount up to 60 days if this is considered necessary during a period of crisis.

#### Suspension / deferral of loan repayments

- The Decree suspends/defers the obligation for natural persons, legal entities, self-employed individuals and businesses to pay loan instalments (including interest payments) of credit facilities granted and/or purchased and/or managed by financial institutions. The Decree covers credit facilities jointly granted by financial institutions and third parties.
- Applies until 31 December 2020.



## Czech Republic



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# COVID-19 PANDEMIC MEASURES

By Petr Guth

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A state of emergency in the Czech Republic was declared on 12 March 2020, continuing for 30 days. It is now extended until 17 May 2020. The Czech government adopted a range of various measures to support businesses, protect employment and help the economy. Some of the measures could be applied with immediate effect within the existing legislation and other measures require a change in law. The following list of measures addresses the most significant actions.

## TAX MEASURES

### Income Tax measures with immediate effect

The deadline for filing 2019 income tax returns has been extended to 1 July 2020. Neither penalties for late filing of the income tax returns nor default interest for late payments until 1 July 2020 will be levied. Advance income tax payments that would otherwise be due on 15 June 2020 have been waived.

### V.A.T. measures with immediate effect

V.A.T. return deadlines are not subject to any changes, but penalties have been waived in connection with the late filing of V.A.T. Control Reports otherwise due between 1 March 2020 and 31 July 2020. V.A.T. has been waived on the free of charge supply of products (or inputs used to make such product) that are used in the fight against COVID-19.

### Other tax measures with immediate effect

Late filing penalties and late payment interest for real estate taxes and real estate transfer taxes otherwise due in the period 31 March 2020 to 31 July 2020 have been waived.

The due dates for the payment of road tax have been deferred. Payments otherwise due in April 2020 and July 2020 are now due by 15 October 2020.

Waivers of various administrative fees have been announced.

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Health insurance payments and social security contributions by self-employed persons otherwise due in the period March 2020 to August 2020 have been deferred. These payments will be due with the annual return and reconciliation. At that time, self-employed individuals will be able to reduce the ultimate annual liability by the annual statutory minimum amounts.

#### Carry backs of tax loss

An amendment to the Income Taxes Act has been proposed to allow for the carry back of tax loss incurred in 2020 to retroactively reduce taxable income in 2018 and 2019, allowing for the payment of tax refunds.

#### Elimination of Real Estate Transfer Tax

The Czech government has proposed legislation to eliminate real property transfer tax imposed on purchasers.

### LABOR MARKET MEASURES

#### Salary compensations under Anti-Virus Program

Under the Anti-Virus Program, where a business encounters a downturn in its economic activity due to spread of COVID-19 infection, upon application of the business, employers are entitled to direct payments from the Czech government, commonly referred to as Regime A and Regime B.

- Regime A relates to employees who have been put under quarantine by order of a responsible medical authority in connection with COVID-19. Here, the employees are entitled to a payment from the employer equal to 60% of their average salary up to a specified cap. In the event of closure of the business due to a Government order, each employee receives a wage compensation payment of 100% of his average salary. The Anti-Virus Program provides that the employer will be reimbursed for 80% of the costs borne in connection with those payments. The monthly compensation per employee is capped at CZK 39,000 (slightly more than €1,400 at current exchange rates).
- Regime B relates to businesses encountering economic difficulties due to the spread of the virus.
  - Where work cannot be assigned by an employer due to the ordered quarantine or childcare responsibilities for a significant portion of the workforce, typically triggered if 30% of workforce

## Czech Republic

are affected, affected employees are entitled to receive compensation equal to 100% of the pre-COVID-19 average salaries.

- o Where work cannot be assigned by an employer due to unavailability of inputs necessary for the activity, such as raw material, products, or services, affected employees are entitled to receive a compensation payment equal to 80% of the pre-Covid19 average salaries.
- o Where work cannot be assigned by an employer due to reduced demand for services, products and other products of the employer, affected employees are entitled to receive a compensation payment equal to 60% of the pre-COVID-19 average salaries.

In all three of these fact patterns, the employer may apply to the Government for reimbursement of 60% of the costs borne with those payments. The monthly contribution per employee is capped at CZK 29,000 (slightly more than €1,050 at current exchange rates).

Certain conditions must be met for the employer to be compensated such as, *inter alia*, a history of compliance with Czech labour laws. The employer will not be reimbursed for employees who have been given a notice. The compensation of costs claimed under the Anti-Virus Program cannot be combined with a support under another program.

### Childcare allowance

Employees as well as self-employed persons may apply for a childcare allowance if they cannot work because they are taking care of children who are under 13 years of age or handicapped. The entitlement applies when schools and other childcare facilities are closed, the child is under a quarantine order, or the person taking care of the child is subject to a quarantine order during the COVID-19 emergency. The childcare allowance is 80% of salary for employees and CZK 424 (about €15.50 at current exchange rates) per day in case of self-employed. The allowance is not automatic; an application must be submitted.

### Financial aid for self-employed

Following to an application, a self-employed person can apply for a lump-sum bonus amounting to a maximum of CZK 25,000 (about €918 at current exchange rates) provided that the following conditions:

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- The self-employed business activity is performed as the main activity unless an exception applies.
- The self-employed was active on 12 March 2020, alternatively the self-employed individual's activity was interrupted at any time after 31 August 2019 due to its seasonal nature.
- The self-employed person declares that the business could not be operated in whole or in part as a result of government emergency measures.

## OTHER MEASURES

### Leases of business premises

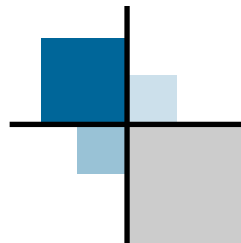
Landlords are not entitled to terminate a lease with tenants who have not paid rent in the period between 12 March 2020 and 30 June 2020 because of emergency restrictions related to COVID-19 that prevent their business from being conducted. The protection period ends on 31 December 2020, and by that time all rent must be paid.

### Financial aid under COVID II

Under COVID II program, C.M.Z.R.B. (the Czech-Moravian Guarantee and Development Bank) provides 3-year guarantees for up to 80% of commercial bank loans and a subsidy to cover interest up to CZK 1 million (slightly more than €37,000 at current exchange rates) on those loans. The program aims at loans drawn to finance operating costs of business such as rent, energy, wages, acquisition of inventory etc.

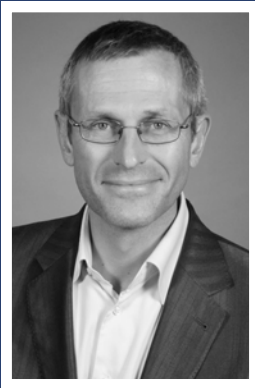
### Extension of deadlines for loan repayments

As of 17 April 2020, a new Act entered into force enabling borrowers to postpone loan principal repayments upon notification to a creditor. A borrower has a choice to decide whether payments begin by either the end of July or the end of October 2020. No fees can be charged for the extension. For certain categories of borrowers, the interest rate is limited.



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## EXTRAORDINARY FRENCH TAX RELIEF MEASURES FOR ENTERPRISES

By Arnaud Jouanjan *Jouanjan & Partners (France)*  
and Christophe Jolk *BMH Avocats (France)*

### TAX MEASURES

The French President, Mr. Emmanuel Macron, has installed a general confinement of the French population as of noon on 17 March 2020, due to the most recent and very concerning evolutions of the spread of COVID-19 in France.

The French government and particularly the French tax authorities have already started to put in place extraordinary measures to relieve French or foreign enterprises which might be taxable in France.

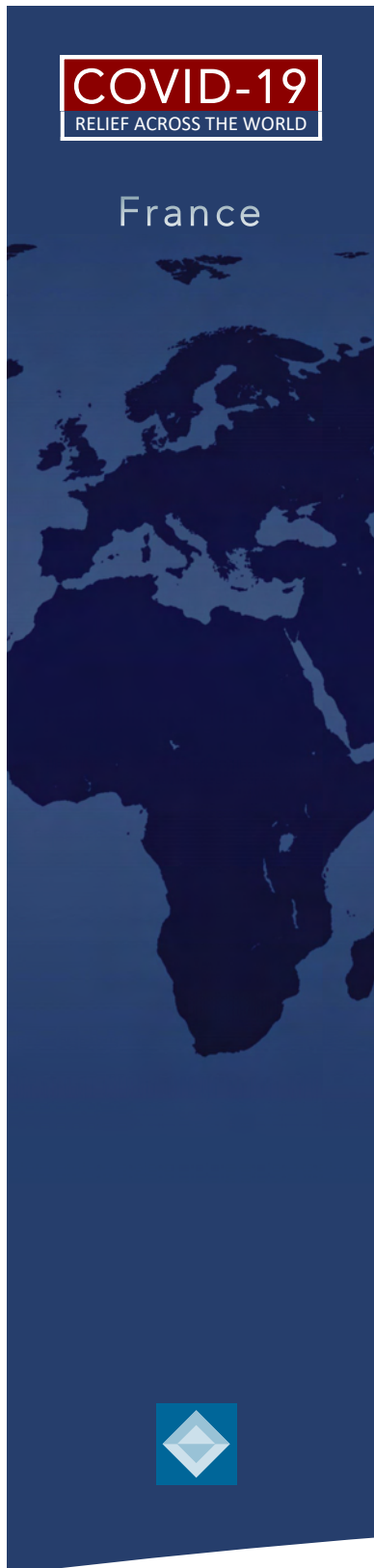
As such, it is possible for enterprises to request from their respective competent French tax bureaus the postponement without penalties of their next payable direct taxes or their advance payments (such as the French corporate tax for instance). If advance payments have already been initiated in March, enterprises may try to oppose their executions directly with their banks. Or, if the payments have already been completed, enterprises may request a refund with their respective French tax bureaus.

To simplify such requests, enterprises may use the new and special forms provided on the website of the French tax authorities<sup>1</sup>. In case of any difficulties to pay their taxes, enterprises should not hesitate to contact their respective tax bureaus via their specific and secured taxpayer accounts, via e-mail or telephone.

Due to the current COVID-19 pandemic, the French 2019 income tax declaration online services will open on 20 April 2020, instead of the originally set date of 9 April 2020. Pre-filled tax forms will be sent between 20 April and mid-May and only to taxpayers who sent paper tax declarations last year.

Further, all declarations deadlines have been pushed back to the following dates:

- Nonresidents and individuals residing in French departments 1 through 19: Thursday 4 June 2020, 11:59 pm
- Individuals residing in French departments 20 through 54 (including 2A and 2B): Monday 8 June 2020, 11:59 pm
- Individuals residing in French departments 55 through 974/976: Thursday 11 June 2020, 11:59 pm
- Paper filing (only if no internet connection is available or if filing online is not possible otherwise), including nonresidents: Friday 12 June 2020, 11:59 pm.



Declaration deadlines for companies have also been postponed to 30 June 2020. This notably applies to corporate income tax returns, with the exception of multinational enterprises with the exception of M.N.E.s unless they undertake to forego the declaration and distribution of dividends in 2020, and to real estate companies not subject to corporate income tax.

French tax authorities have also stated that a forced stay on French soil due to travel bans will likely be disregarded for determining where one has a "home" or a "residence" for tax purposes.

## RELIEF MEASURES

The French Government has taken several far-reaching emergency measures to help businesses through the current health crisis.

The Government will guarantee business short-term loans up to €300 billion to avoid bankruptcy. These loans will be guaranteed by the State up to 90% of the principal and interests. They concern most businesses.

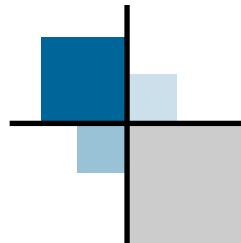
**Loan application are to be made directly to your banks.**

Tax measures have also been taken. A 3-month postponement of all tax and social charges deadlines can be requested without any justification - but V.A.T. is still due. It is also possible to apply for direct tax reliefs. Applications will be examined on a case-by-case basis.

**Please find hereafter the other measures taken as of today:**

- Stability of employment through partial unemployment schemes made simpler and covered by the State.
- Immediate financial support of €1,500 for small and micro-businesses and self-employed workers.
- Postponement of rents and water, gas and electricity bills for small ailing businesses.
- Deferred repayment of bank loans is made easier.
- The emergency fund for small businesses has been increased to a total of €7 billion. In addition to the €1,500 support mentioned above, financial support of €2,000 to €5,000 can be allocated to small businesses.
- Companies with pending V.A.T. and corporate income tax credits can apply for an immediate refund.

1. <https://www.impots.gouv.fr/portail/node/13465>



## Germany



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# COVID-19 – TAX RELIEF MEASURES \*

By Petra Eckl

*GSK Stockmann (Germany)*

The corona crisis is a heavy burden on certain German businesses. The government and the federal states have now decided to grant tax privileges to those affected.

On 19 March 2020, the Federal Ministry of Finance (B.M.F.) and the highest tax authorities of the federal states took action in order to mitigate the consequences of the current corona crisis for all taxpayers and companies operating in Germany. The Finance Ministry sent out a letter in this regard and the tax authorities of the federal states issued a decree of identical content. The relief measures aim in particular at maintaining the liquidity of the companies during the crisis and at avoiding additional strain due to tax payments.

## THE MEASURES IN DETAIL

### Tax deferrals

Until 31 December 2020, affected taxpayers can submit applications to their competent tax office to defer payments for income or corporate income taxes that are due now and until that date. Deferrals of tax payments due after 31 December 2020 require a special justification.

In general, the tax authorities will waive interest charges on these deferrals.

It should be noted, however, that this tax deferral option does not automatically apply to trade tax payments administered by the municipalities. In this respect, they are not bound by the decision taken by the B.M.F. and the federal states. Even though municipalities are not required to, there is hope that they will apply similarly accommodating options for tax deferrals.

### Adapting prepayments on income, corporate and trade tax

Taxpayers may submit applications to their respective tax office for adapting prepayments on income and corporate income tax as well as for adapting the trade tax assessment amount in the context of trade tax prepayments. If a tax office approves adapting the trade tax assessment amount, this will also be binding for the municipalities responsible for levying trade tax.





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### Suspending enforcement measures

Until 31 December 2020, affected taxpayers will be exempted from enforcement measures regarding income and corporate income tax payments currently pending or due by that date. Taxpayers seeking to benefit from this must actively inform the relevant tax office, unless the tax office has direct knowledge of the fact that those taxpayers are directly affected. In addition, for the period from 19 March 2020 to 31 December 2020, late-payment penalties will be waived for those affected.

Again, this does not apply to trade tax payments, as the municipalities do not have to follow the federal and state authorities.

### Individual taxpayers

Any taxpayer who can prove that he/she is directly and significantly affected by the economic impact of the corona virus can invoke the mentioned measures. Expressly, it is not required to show proof of the exact amount of the financial loss suffered in this case.

Considering the large number of general rulings issued by the police in recent days and weeks – banning assemblies and events, closing restaurants, bars, playgrounds and amusement arcades and, in particular, restricted travel – it should be fairly easy to present the necessary evidence, hoping that the tax authorities will examine each case in an unbureaucratic manner.

Taxpayers only indirectly affected by the effects of the corona crisis are not covered by the measures presented above and should refer to general principles regarding tax matters. This does not mean, however, that filing an application is without any chance of success. We advise that indirectly affected taxpayers should submit the relevant applications and separately show a justification for undue hardship based on the current situation.

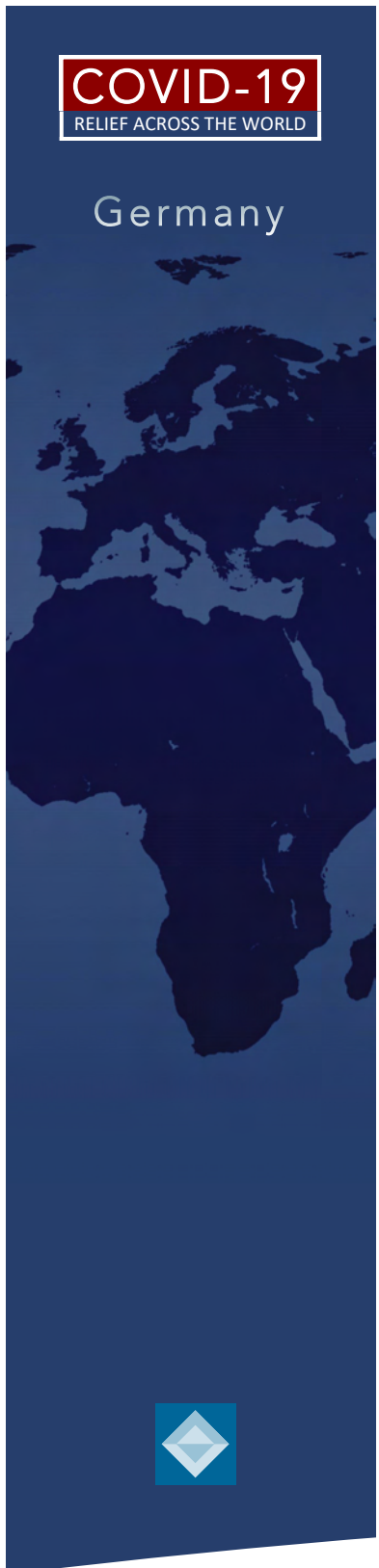
Even in “grey area” cases, taxpayers should definitely refer to the B.M.F. and federal state measures in their applications. The B.M.F. clearly stated – at least regarding deferrals – that the authorities will not be too strict when examining the requirements.

### CONCLUSION

The measures represent an important and welcome step towards relieving the burden on taxpayers affected by the crisis and their objectives are in line with other measures the German government adopted previously, in particular expanding K.f.W. loan options. The government wants to help secure the liquidity of companies in Germany in order to preserve jobs.

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Further fiscal measures, such as extending deadlines for filing declarations without the imposition of late filing penalties, and economic measures, similar to the emergency relief program in Bavaria, would be desirable.

Affected companies should react quickly and not hesitate to file the respective applications. Even if they are not technically covered by the new measures, an application referencing the general rules and undue hardship can be promising, especially considering that the full economic impact of the corona crisis is not yet foreseeable.

Finally, companies affected by the crisis should also make use of existing regulations and general tax relief rules as much as possible, for instance, tax exemption of restructuring income, e.g. in the case of loan waivers, and examine tax-optimizing restructuring options in order to make it through this crisis unscathed.

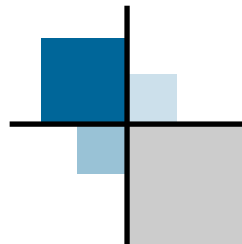
\* This article is based on material that appeared originally on the GSK Stockmann website.

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Original document can be found at:

[gsk.de/en/covid-19-legal-implications-coronavirus-crisis/](https://gsk.de/en/covid-19-legal-implications-coronavirus-crisis/)



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## COVID-19 – V.A.T. RELIEF \*

By Petra Eckl

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In terms of value-added tax (V.A.T.), companies suffering from the coronavirus crisis can avoid liquidity disadvantages– in some cases, even refunds are possible.

### RELIEF MEASURES AT FEDERAL AND STATE LEVEL (LÄNDER)

For companies that are particularly affected by the economic consequences of the coronavirus crisis, it is possible to obtain deferrals, reductions of prepayments and a stay of execution for tax payments. These regulations also apply to V.A.T., as the Federal Ministry of Finance (B.M.F.) has now clarified. At first glance, this is surprising as the tax authorities have been rejecting applications for V.A.T. deferrals in principle on the grounds that the taxpayer collects the tax from the recipient for the tax authorities and that this has the effect of a transitory item for the entrepreneur.

### COMPANIES DIRECTLY AND SIGNIFICANTLY AFFECTED

There are no strict requirements for verifying the conditions under which the coronavirus crisis has directly and not merely insignificantly affected a company. Plausible information from the taxpayer that the coronavirus crisis is having serious negative effects on his or her economic situation is sufficient for the tax authorities.

Every day, the number of businesses directly affected and the number of owners facing numerous constraints on their daily lives is likely to grow. For example, the current nonpayment of rents due to the COVID-19 crisis will lead to a lack of liquidity among landlords. Insofar as rentals in the commercial sector are subject to V.A.T., the V.A.T. – as a rule for businesses – must nevertheless be included in the advance V.A.T. returns if the landlord has executed his or her rental service, even if no payment is received. In this respect, a deferral – preferably interest-free – can prevent a liquidity disadvantage. Only those entrepreneurs who are subject to actual taxation (V.A.T. becomes due at the time of the cash-in of the rent) do not need to transfer V.A.T. to the tax authorities before receiving the rent.

With regard to coronavirus-related rent losses or rent reductions, we assume that the landlords concerned are entitled to interest-free payment deferrals. In this case, the legislature created the prerequisites for such revenue losses from an economic point of view on 27 March 2020, with the Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law (COVID-19 Act) by removing the possibility of termination.

## REIMBURSEMENT OF V.A.T. PREPAYMENTS

As the B.M.F. has made clear<sup>1</sup>, the measures even go one step further. It is possible for those who are not merely insignificantly affected to adjust V.A.T. prepayments retroactively and reduce them to zero for 2020. This means that advance payments already made can also be refunded. This applies to cases in which a permanent extension has been granted. The application must be submitted informally or via the respective electronic transmission system (*Elektronische Steuererklärung – ELSTER*) to the responsible tax office<sup>2</sup>. If the direct and significant effect does not result from the trade practiced, this should be explained in the application in a comprehensible manner. An example of a trade for which an explanation could be helpful is a stand constructor business.

## CONCLUSION

Interest-free deferrals and refunds of V.A.T. prepayments already made can be a simple means for affected companies to obtain additional liquidity during the crisis.

Some taxpayers must be careful not to suffer an additional liquidity disadvantage in the event of a loss of turnover due to the coronavirus crisis, if they also have to pay V.A.T. on the lost turnover. We are of the opinion that such entrepreneurs are entitled to interest-free deferrals and that they can claim reimbursement of the tax prepayments.

However, it should be pointed out that, in our experience, the tax authorities in the individual federal states have different requirements in terms of who qualifies as “directly and significantly affected.” In the interest of uniform handling and legal certainty, it would be desirable if the new relief measures were applied and interpreted in a uniform, unbureaucratic, and comprehensive manner.

<sup>1</sup> Sh. F.A.Q. “Corona” of the B.M.F. dated 1 April 2020 (point II.1).

<sup>2</sup> For the procedure in ELSTER, please refer to the practical instructions of the Bavarian tax authorities.

\* This article is based on material that appeared originally on the GSK Stockmann website.

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## COVID-19 – TAX RELIEF FOR INVESTMENT FUNDS \*

By Petra Eckl  
*GSK Stockmann (Germany)*

Due to the COVID-19 pandemic, the passive violation of asset composition limits in March and April 2020 will be without consequences for investment funds.

### FEDERAL AND STATE LEVEL RELIEF

On 9 April 2020, the Federal Ministry of Finance (B.M.F.) (after coordination with tax authorities of the federal states) published a decree regarding tax relief measures for investment funds reflecting the economic consequences of the COVID-19 pandemic<sup>1</sup>.

### PASSIVE VIOLATION OF ASSET COMPOSITION REQUIREMENTS

A substantial violation of the requirements for the composition of assets leads to the loss of the status as an equity fund, a mixed fund or real estate fund in accordance with Sec. 2(6) s. 4, Sec. 2(7) s. 4 or Sec. 2 (9) s. 7 of the InvStG. This status is particularly relevant for the taxation of investors, as it determines the rate of the partial tax-exemption applied in accordance with Sec. 20 InvStG.

In the event of a passive violation of the asset composition requirements, a substantial violation of the asset composition requirements might be assumed if the investment fund does not take possible and reasonable measures immediately after becoming aware of the violation in order to restore the required level of capital participation or real estate investments<sup>2</sup>.

Due to the COVID-19 pandemic, the B.M.F. communicated in its decree of 9 April 2020 that, in principle, a passive violation of the asset composition requirements will not be considered a substantial violation for the period between 1 March and 30 April 2020. In this regard, the B.M.F. expressly refers to a regulation for equity and mixed funds. However, the same treatment should apply to real estate funds, since the regulations for equity or mixed funds apply to real estate funds in this respect<sup>3</sup>.

### 20-BUSINESS DAY LIMIT

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If an equity fund, a mixed fund, or a real estate fund falls short of the asset composition requirements stipulated in Sec. 2(6), 2(7) or 2(9) InvStG for a total of up to 20 individual or consecutive business days within a financial year (the “20-business day limit” ) this will not be considered a substantial violation of the asset composition requirements<sup>4</sup>.

As, however, a period of 20 business days may prove to be too short in the current COVID-19 pandemic, a passive violation of the asset composition requirements occurring between 1 March and 30 April 2020, will not be counted towards the 20-business day limit.

## SUBSTANTIAL VIOLATION OF THE INVESTMENT REGULATIONS OF A SPECIAL INVESTMENT FUND

The status as special investment fund under Sec. 26 InvStG depends, among other things, on the fund not substantially violating the investment requirements listed in Sec. 26 InvStG in its actual investment practice.

If special investment funds do not comply with the statutory limits in March and April 2020, due to a passive violation of the asset composition requirements, this will not be considered, in principle, a substantial violation of the investment rules.

## CONSEQUENCES FOR THE PROCEDURAL LAW

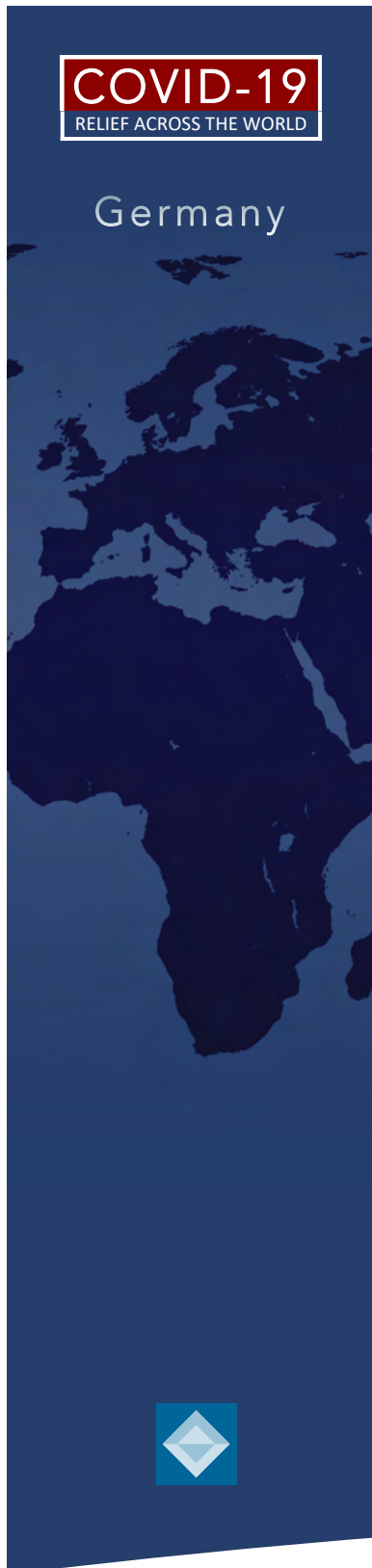
The B.M.F. did not comment on the procedural consequences of a possible retroactive application of the B.M.F. decree of 9 April 2020.

If, in accordance with B.M.F. decree of 9 April 2020, there is no substantial violation of the asset composition requirements, we do not believe that the investment fund should be required to notify the competent tax authority as Sec. 153(2) Fiscal Code (AO) demands<sup>5</sup>.

In our opinion, it should not be necessary for investors to be notified of a change in the partial tax-exemption rate<sup>6</sup>. Similarly, it should not be necessary to notify other parties such as those obliged to pay taxes or various financial information service providers (e.g., WM-Datenservice)<sup>7</sup> of a correction of previous information on the applicable partial tax-exemption rate since no “substantial violation” has occurred.

If such changes or corrections have already been implemented for the period beginning 1 March 2020, we believe that it should be possible to reverse this.

If a party obliged to pay taxes has assumed a substantial violation because of the notification and has already taken the loss of status of an equity fund, mixed fund, or real estate fund into account for the deduction of withholding taxes, we believe that this<sup>8</sup> should be reversible, too.



## CONCLUSION

The measures of the B.M.F. decree of 9 April 2020, are a helpful measure for crisis management. However, due to its retroactive application to 1 March 2020, it would have been helpful for the B.M.F. to include information on reversing actions already taken as a consequence of an assumed passive violation of the asset composition requirements.

The fact that the measures are limited in time to 30 April 2020 has caused some concerns. It remains to be seen whether the B.M.F. will grant an extension.

<sup>1</sup> B.M.F. decree of 9 April 2020, Investment tax measures reflecting the economic consequences of the COVID-19 pandemic, IV C 1 -S 1910/19/10079 :002.

<sup>2</sup> B.M.F. decree dated 21 May 2019, regarding the Investment Tax Act; questions of application of the Investment Tax Act in the version applicable from 1 January 2018 (InvStG), BStBl 2019 I p. 527 ("InvStG 2018 B.M.F. decree"), no. 2.18.

<sup>3</sup> InvStG 2018 B.M.F. decree, no. 2.41.

<sup>4</sup> InvStG 2018 B.M.F. decree, no. 2.19.

<sup>5</sup> InvStG 2018 B.M.F. decree, no. 2.22 makes a substantial violation of the requirements regarding the composition of assets a precondition in this respect.

<sup>6</sup> InvStG 2018 B.M.F. decree, no. 2.22.

<sup>7</sup> InvStG 2018 B.M.F. decree, no. 2.22.

<sup>8</sup> Cf. generally InvStG 2018 B.M.F. decree, no. 2.23.

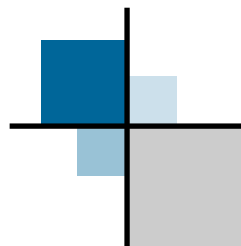
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## NEW TAX PROVISIONS SET FORTH BY LAW DECREE NO. 18 OF 17 MARCH 2020

By **Andrea Tavecchio and Riccardo Barone**

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As pandemic epicenter in Europe, the situation here in Italy is quite complicated. This article shares the Italian experience against the spread of the COVID-19 and briefly illustrates the main provisions introduced by the Italian government to strengthen the National Health Service and provide economic aid for families, workers and businesses to cope with the COVID-19 epidemiological emergency. Such measures have been included in the Law Decree issued on 17 March 2020, named 'Save Italy – Decree' ("Decree").

In April, the Government issued another Law Decree ("Liquidity Decree"), No. 23 of 8 April 2020, implementing a series of measures to suspend, postpone or shift tax payments and fulfilments, in addition to what already provided for in the previous Decree-Law no. 18 of March 17 2020, whose provisions remain valid, for those entitled, for the month of April 2020.

Below a summary of the main relevant tax provisions included in both decrees.

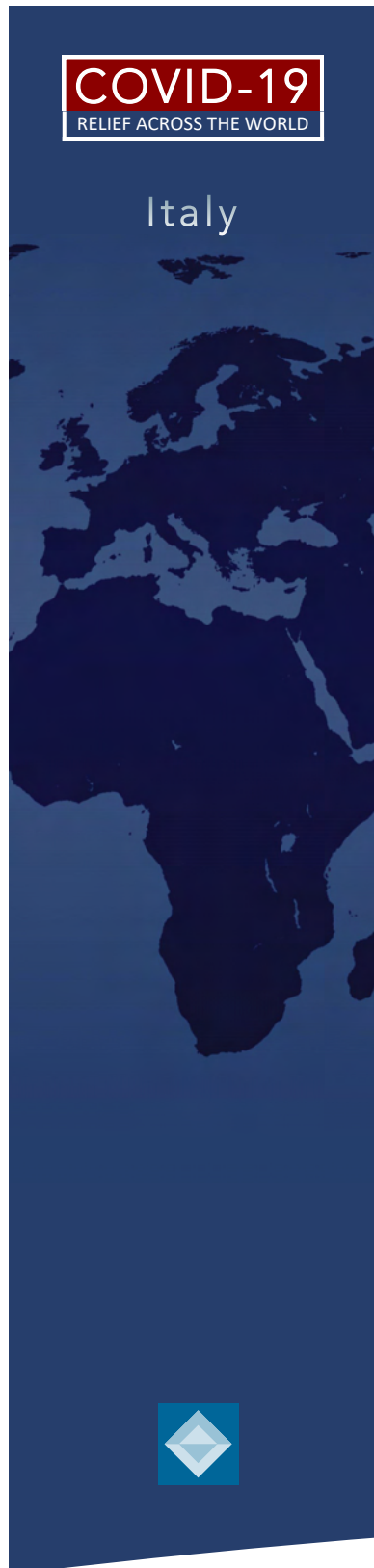
### EXECUTIVE SUMMARY

On 17 March 2020 the Italian government enacted the Decree. It is divided into five headings covering: (i) provisions to strengthen the National Health Service; (ii) provisions to support employment; (iii) provisions to support financial needs through the banking system; (iv) fiscal provisions to support families and enterprises; (v) and further provisions. It injects €25 billion of cash into the system.

Among the different provisions, the main pillars are:

- Extension of special measures consisting of social shock absorbers throughout the country: in case of reduced or suspended business activity due to COVID-19, certain existing social shock absorbers will be funded and made available to qualifying employers, like "C.I.G.O.", "Fondi di Solidarietà Bilaterali Alternativi" and "F.I.S.". Each one of these social shock absorbers has specific requirements that will be implemented in the coming days by provisions issued at ministerial and regional level. In addition to the above, a special unemployment fund, known as "C.I.G.D.", will be made available for employers who do not qualify for the above listed social shock absorbers.





- Tax provisions: (i) postponement of withholding tax payments, social security and welfare contributions and compulsory insurance premiums; (ii) postponement of tax and social security contributions payments and compliance deadlines and postponement of V.A.T. payments for certain taxpayers; (iii) employees bonus; (iv) tax credit for workplace sanitization costs; (v) tax credit for shops and stores; (vi) tax deduction for gifts in support of the COVID-19 epidemiological emergency; and (vii) postponement of the deadlines for payment of the debts administered by collection agents.

The following paragraphs analyze articles 55, 60-71, 83, 98 of the Decree in light of clarifications made in the Explanatory Statement (“Explanatory Statement”). It focuses primarily on tax provisions,

Before moving to the measures in detail, it’s important to point out that, notwithstanding the provisions of art. 2364, c. 2, and by art. 2478-bis of the Italian Civil Code, all companies will be allowed to call the ordinary general meeting for the approval of the financial statements within 180 days from the end of the financial year.

For limited companies and cooperative companies, the notice of call of the ordinary and extraordinary general meeting may provide, also by way of exceptions from the provisions of the by-laws, for digital voting or voting by mail and for the digital attendance at the meetings. Shareholders' meetings may take place entirely by telecommunication means guaranteeing the identification of the participants, their participation, and the exercise of the right to vote, without the need for the chairman, the secretary or the notary to be in the same place.

By way of derogation from art. 2479, c. 4, of the Italian Civil Code and any provisions of the by-laws, limited liability companies formed as S.r.l.'s may provide for voting by written consultation or by written consent.

The above provisions apply to the general meetings called by 31 July 2020 or by any later date while the state of emergency is in force.

## MEASURES IN DETAIL

### Art. 55 - Financial measures to support enterprises

Article 55 of the Decree, is aimed at supporting businesses in terms of financial needs. It allows impaired certain deferred tax assets (“DTA’s”) arising through 31 December 2020 to be converted into refundable tax credits that can be used, without limitation for the payment of taxes, withholding taxes and social security contributions. These credits may be sold within a group or to third parties or by the tax authorities if a company has insufficient tax and contribution liabilities to absorb the full credit. The benefit is allowed even when the DTA’s are not actually booked in the financial statements,



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The convertible DTA are those relating to (i) tax losses that can be carried forward pursuant to Article 84 of the Tax Code (DPR 917/1986) and (ii) the amount of notional interest expense deductions on the Allowance for Corporate Equity ("A.C.E.") exceeding total net income and which at the date of the assignment of the receivables has not yet been deducted from or otherwise set against the taxable income.

The benefit deriving from the above components cannot exceed 20% of the face value of the receivables transferred. The latter can be considered for a maximum amount of €2 billion. The tax credit can be offset, without any limitation as to the amount, through the F24 Form or transferred or requested for refund.

The tax credit must be reported in the tax return and does not concur to the taxable basis for both corporate income tax and regional tax.

**Art. 60 - Relief from time limits**

Payments to public administrations that are due on 16 March 2020 are postponed until 20 March 2020 without the application of penalties and interest.

**Article 61 - Postponement of payments of withholdings, social security and welfare contributions and premiums for compulsory insurance**

For specific categories of taxpayers carrying out activities that are affected principally by the emergency as provided by the Decree, withholding payments, social security and welfare contributions and premiums for compulsory insurance are suspended for the period between 2 March and 30 April 2020. Business that can benefit from the suspension include those in the fields of entertainment, sports, restaurants, transport, and education. Payments will be due without penalties and interest by 31 May 2020 or split in five equal monthly payments starting from that date. Businesses entitled to this relief are also entitled to the deferment of V.A.T. payments that were due in March.

**Art. 62 - Postponement of tax payments and compliance deadlines**

Subject to certain exceptions, tax payments due between 8 March 2020 and 31 May 2020 are postponed. The revised due date for these payments is 30 June 2020. If made by that date, no penalty will be imposed. The postponement does not cover payments of regional and municipal surcharges

For the time being, the delivery and electronic filing of the statements of withholding tax related to 2019 remains on 31 March 2020 which already reflects an extended deadline.

For taxpayers carrying out a business, art, or professional activity having turnover not exceeding €2 million in the previous fiscal year, the following payments due between 8 March and 31 March 2020, are deferred:



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- Withholding taxes pursuant to articles 23 and 24 of the Presidential Decree n. 600/1973, also relating to the regional and municipal charges, in relation to which the aforementioned subjects operate as a withholding agent.
- V.A.T.
- Social security and welfare contributions and premiums for compulsory insurance.

The deferred payments must be paid by 31 May 2020 or split into five equal monthly payments starting from that date. If payments are timely made, penalties and interest will not be imposed.

For taxpayers reporting revenues or fees not exceeding €400,000 in the previous tax period, the revenues and fees received in the period between the date of entry into force of the Decree and 31 March 2020 are not subject to withholding taxes pursuant to articles 25 and 25-bis of the Presidential Decree n. 600/1973, provided that in the prior month they did not bear any expense for employee compensation. Instead of withholding taxes, amounts due are to be paid directly by the taxpayer without the application of penalties and interest. Again, payment is due by 31 May 2020 or split into five equal monthly payments starting from that date.

Further specific exemptions are provided for taxpayers who are resident or operating in the Provinces of Bergamo, Cremona, Lodi or Piacenza.

**Art. 63 - Bonus to employees**

A bonus of €100, to be weighted by the number of working days carried out at the workplace in March 2020, is granted to employees with a total yearly income not exceeding €40,000.

The bonus is not included in the taxable base for direct tax purposes and will be paid automatically by the employer, starting with the month of April, and in any case within the terms provided for the adjustments.

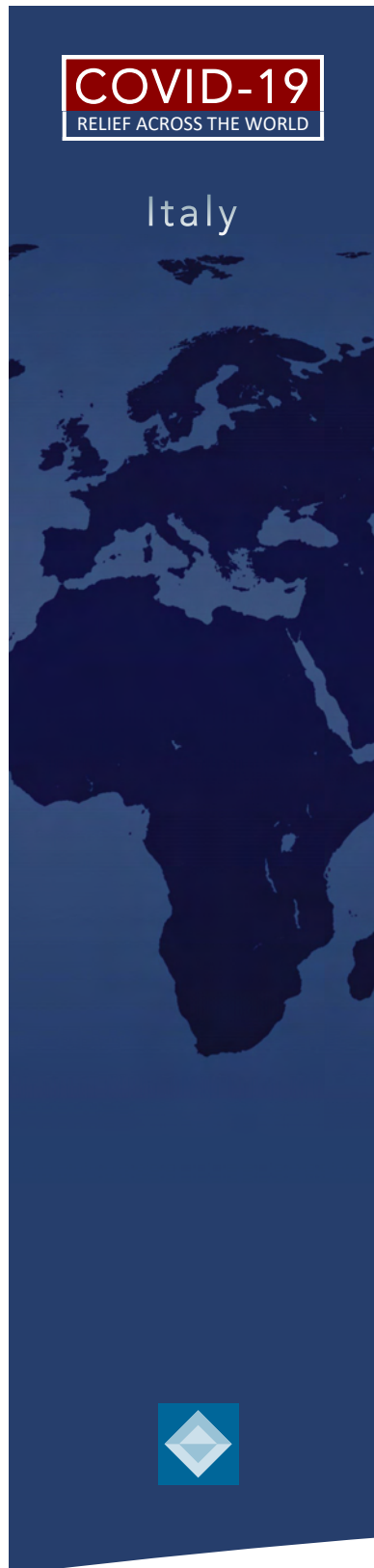
Employers recover the incentive when filing an F24 Form.

**Art. 64 - Tax credit for workplace sanitization costs**

In order to encourage the sanitization of the workplace, as a preventive measure for the COVID-19 virus, a tax credit is introduced in favor of taxpayers carrying on business, art or professional activities. The tax credit for the 2020 is equal to 50% of the expenses incurred for sanitizing workplaces and work tools, capped at €20,000. The implementation of the tax credit is subject to the publication of an official decree. The credit has been expanded in the Liquidity Decree, which is discussed below.

**Art. 65 - Tax credit for shops and stores**

Article 65 of the Decree authorizes the grant of a tax credit in favor of all business operators to the extent of 60% of rental payments related to



March 2020 for buildings falling under cadastral category C/1. The tax credit will be claimed when preparing an F24 form.

#### **Art. 66 - Pro-COVID Donations**

Donations made to support the measures against the spread of COVID-19 are deductible from the taxable basis for I.R.E.S. purposes, to the extent that they are made through foundations, associations, committees and entities. The same donations are deductible from the taxable basis for I.R.A.P. purposes in the fiscal year in which the payment is made. Deductions may be claimed against the gross tax of individuals for 30% of donations in support of the measures against the spread of COVID-19. The deduction is capped at €30,000.

#### **Art. 67 - Suspension of the terms relating to the activity of the tax offices**

In the period between 8 March and 31 May 2020, the terms and deadlines for tax offices and tax authorities are suspended with regard to the following activities:

- Liquidation, control, assessment, collection and litigation activities.
- Preparing answers to various ruling requests, including ordinary rulings, anti-avoidance rulings, new investment rulings, and collaborative compliance regime rulings. The deadlines for submitting supplementary documentation to the ruling requests are also suspended.
- Ruling requests may be filed electronically during the suspension period, but the time limit for a response by tax authorities begins 1 June 2020.

No specific indication is provided in relation to the tax settlement procedures. So far, Tax Offices are respecting the regular deadlines without taking into account the suspension period and discussions with taxpayers is made remotely by phone or e-mail.

#### **Art. 68 – Postponement of the deadlines for payment of the debts administered by the Collection Agent**

The deadlines for payment of sums due in the period between 8 March and 31 May in relation to collection notices, tax assessments that are already final, assessment notices issued by the Customs Agency and other local authorities, and I.N.P.S. assessment notices are deferred to 30 June 2020.

Payment of sums due under pending voluntary settlements of the tax bills (so-called *Rottamazione ter*) are deferred to 31 May 2020. This covers installments otherwise due between 28 February 2020 and 31 March 2020.

#### **Art. 69 - Postponement of the payments in the gaming sector**

The deadline for the payment of the single tax collection on gaming machines, slot machines, and video lottery terminals, and the concession fee expiring on 30 April daily interest at the legal rate. The first instalment is due not later than 29 May 2020 and the subsequent instalments by the last day of the month. The last instalment is due not later than 18 December 2020.

#### **Art. 70 - Strengthening of the Customs and Monopolies Agency**

For the year 2020, the resources allocated to the remuneration of overtime work for the staff of the Customs and Monopolies Agency is increased by €8 million. This reflects the increase in activities at ports, airports and customs points.

#### **Art. 71 – Publicity for waiver of postponements**

Article 71 of the Decree allows taxpayers who voluntarily waive the postponements provided for by the Decree to request that their decision will be published on the institutional website of the Ministry of Economy and Finance, in order to gain an advantage in terms of their reputation in the public eye.

#### **Art. 83 - Tax disputes**

The Decree extends the official postponement of the hearings scheduled for the period of 9 March - 15 April 2020. The delay was introduced with Legislative Decree 11/2020 of 8 March 2020. The period for filing a brief or document related to the tax proceedings between 9 March and 15 April 2020 is also postponed. Finally, the deadline to bring an appeal before the first-level tax court and to reach compromises is also suspended during the period 9 March and 15 April. A clarification is need in respect to the ongoing settlement procedure.

#### **Art. 98 – Printing Industry**

The Decree provides for a tax credit that may be claimed for advertising investments through press, television and radio broadcast. The amount of the credit is 30% of the value of the investments. Previously, the credit was 75% of the incremental increase in advertising investments. The provision is valid for the period 2020-2022.

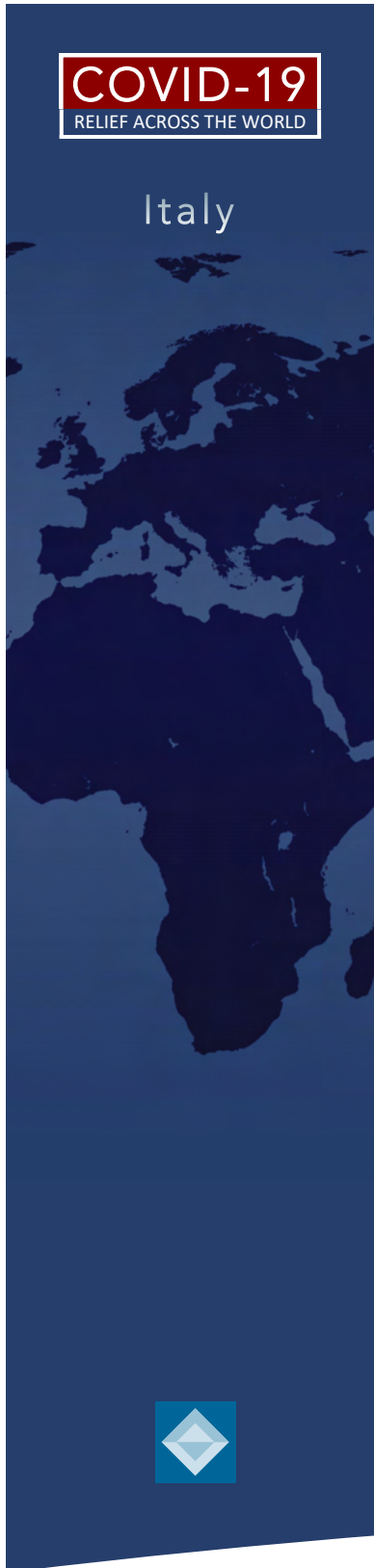
### **LIQUIDITY DECREE: THE MEASURES IN DETAIL**

#### **Art. 18 - Suspension of payments due in April and May 2020**

V.A.T., withholding taxes on employment income, social security and welfare contributions payments due in April and May 2020 are suspended for taxpayers that (i) reported revenue (including fees) for 2019 that did not exceed €50 million and (ii) encounter a reduction in turnover or fees of at least 33% when comparing March and April 2020 with March and April 2019. For taxpayers having revenue in 2019 exceeding €50 million, the withholding taxes and contributions are suspended if the year-to year reduction in

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turnover or fees exceeds 50% for the same two-month period. Similar relief applies to taxpayers whose activity began after 31 March 2019.

The suspended payments are due by 30 June 2020, in a single installment or in five equal monthly instalments beginning on that date. Neither penalties nor interest is due for the suspension of payments.

**Art. 19 - Withholding tax deferral for self-employed workers**

Compensations received during the period beginning 17 March 2020 and ending 31 May 2020 by self-employed individuals who do not employ others and whose revenues or compensation in the last fiscal year did not exceed €400,000 are not subject to withholding tax, provided that client invoices expressly excludes an entry for withholding tax.

The tax must be declared and paid by the self-employed individual. Payment is due by 31 July 2020 in a single installment or in five equal monthly instalments beginning on that date. Neither penalties nor interest is due for the suspension of payments.

**Art. 20 - Advance payments for I.R.E.S., I.R.P.E.F. and I.R.A.P.**

Underpayments of advance instalment payments of personal and corporate income tax and regional tax on productive activities (I.R.P.E.F., I.R.E.S. and I.R.A.P.) will not be subject to interest or penalties, provided that the underpayments are not greater than 20% of the amount ultimately due. This applies only for fiscal year 2020.

**Art. 21 - Suspension of payments to public administrations**

All payments to public administrations (including V.A.T. payments, withholding tax payments and social security and welfare contributions) expiring on 16 March 2020, can be executed late. If fully paid by 16 April 2020, neither penalties nor interest will be due. Otherwise penalties and interest will be imposed.

**Art. 30 - Tax credit for the purchase of protective equipment in the workplace**

The tax credit granted under the Save Italy Decree for 50% of expenses incurred to sanitize work environments is expanded to cover expenses incurred for work tools and for the purchase of personal protective equipment and other safety equipment to protect workers.



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## LUXEMBOURG - MAIN MEASURES

By **Graham J. Wilson**

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As in many other countries, the Luxembourg government announced a number of measures to stabilize the economy as a result of the COVID-19 Pandemic (the 'Crisis'). These have been announced within the legal framework of a State of Emergency (*État de Crise*) which was officially declared on 18 March 2020 and which has been formally extended by Parliament for the maximum 3-month period permitted by the Constitution on a renewable basis.

This article reports on the main measures announced within this legal framework. All measures are subject to almost constant change, as details emerge of the effects of the Crisis constantly emerge and the need for further measures expands. These measures and further information can be found, in French, German and English, through the following Ministry of The Economy website<sup>1</sup>.

Some of the announced initiatives have not been formalized within the State of Emergency regulatory framework. Consequently, uncertainty exists as to their full effect. This may play out in the context of the way relief measures are applied in practice by the civil service. Additionally, within the Civil Law system that applies in Luxembourg (as compared to the Anglo Saxon/Common Law), the distinction between a "commercial" business and a "profession" exists for legal purposes. As a result, differences in opinion exist concerning whether relief measures announced for business can benefit lawyers and other self-employed individuals, and if so, the extent of the benefits.

### DIRECT TAX MEASURES

Provided that they are experiencing liquidity problems as a result of the crisis, legal entities and individuals engaged in commercial endeavors, an agricultural and forestry profit, or a profit resulting from the exercise of a liberal profession may apply for:

- A cancellation of quarterly advances of (i) income tax or corporate income tax and (ii) municipal business tax for the first and second quarters of 2020 and

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- Deferral of payment of (i) income tax or corporate income tax, (ii) municipal business tax, and net wealth tax.

Requests for cancellation of advances and payment deadlines must be made online and are automatically accepted by the administration for eligible taxpayers. In addition, the deadline for submitting tax returns by legal entities and individuals has been deferred to 30 June 2020. No requests regarding quarterly advance tax payments or tax payments that were due before 29 February 2020 should be made.

### INDIRECT TAX MEASURES

As a result of the crisis, the Luxembourg Indirect Tax Administration (*Administration de l'Enregistrement, des Domaines et de la TVA – A.E.D.*) announced that administrative penalties for late filing of V.A.T. returns are waived. This measure applies until otherwise indicated by the A.E.D.

With regard to indirect taxes, the A.E.D. is immediately reimbursing all V.A.T. credit balances below €10,000 arising after 16 March 2020.

### SOCIAL SECURITY CONTRIBUTION MEASURES

With effect from 1 April 2020 and until further notice, the Social Security Administration (*Centre Commun de la Sécurité Sociale or C.C.S.S.*), is putting in place the following temporary measures companies and independent businesses:

- Suspension of late payment interest calculations on late payments.
- Suspension of the initiation of legal proceedings for forced repayment of contributions.
- Suspension of collection procedures involving bailiffs.
- Suspension of fines for delays in filing declarations.

While all social security contributions remain due, these measures provide some degree of liquidity by deferring the date of payment and eliminating penalties. The measures apply to current and future contributions and to currently outstanding balances. However, businesses should anticipate eventual additions for interest payments and fines that appear in the statement of account of the C.C.S.S. dated 14 March 2020.

Completing these measures, the C.C.S.S. will accelerate the time it reimburses employers for salary continuation payments to employees



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entitled to extraordinary leave for family reasons (*congé pour raisons familiales extraordinaire - COVID-19*) arising from the temporary closure of primary and secondary educational facilities, professional training, and care centers. Ordinarily, reimbursement would be made in the month of May 2020 by the Employers' Mutual Insurance Scheme (*Mutualité des Employeurs*). Now, payment will have been targeted to be made in mid-April 2020.

### SHORT TIME WORK

The short-time working scheme is intended to protect jobs in companies encountering structural difficulties, cyclical economic problems or economic difficulties following the loss of one or more of their main customers. Businesses who resort to short-time working commit forego dismissal of employees for economic reasons.

Faced with the magnitude of the coronavirus crisis and its tangible repercussions on the lives of businesses and their employees, the Luxembourg government has decided to set up a "*force majeure* coronavirus" short-time working scheme with an accelerated procedure for all businesses that have had to completely or partially cease their activities.

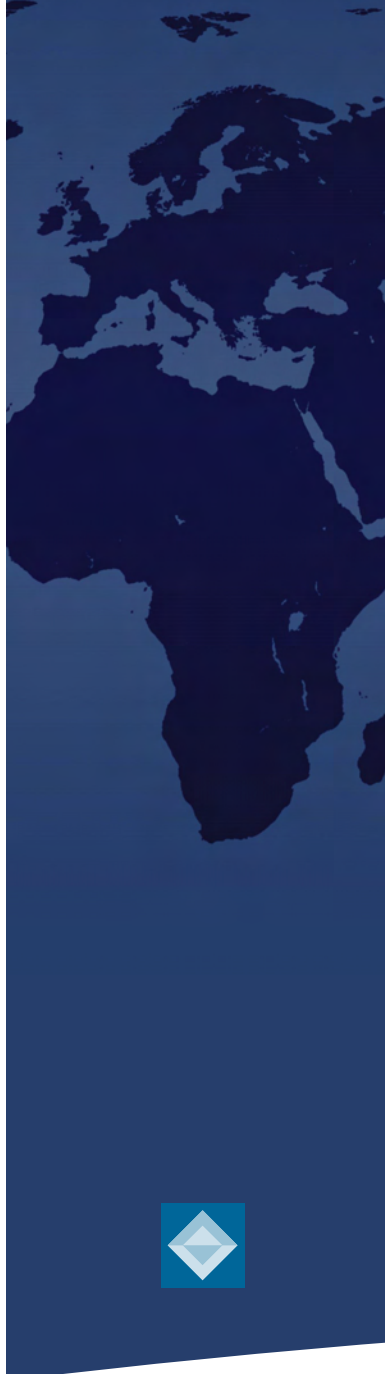
The short-time working scheme applicable to the existence of *force majeure* applies in principle to businesses in all economic sectors encountering a downturn in business that is directly linked to the COVID-19 virus. To illustrate a supplier of raw materials to the business is unable to supply the required volume of raw materials due to a shelter in place order. Another illustration is a significant drop in customer demand also because a shelter in place order. Each would be considered to be a *force majeure*/coronavirus.

To apply for short-time work in the event of *force majeure*, the business must:

- Be established in Luxembourg.
- Hold, where applicable, a business permit granted by the competent authority.
- Be impacted by the economic or legal consequences of an external event which makes it impossible for the business to continue its normal economic activity. The event must not have been caused by the business.
- Undertake to not dismiss any employee for economic reasons.

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The short-time working relief in case of *force majeure* is granted for a maximum of 1,022 hours per year for each full-time working employee. For persons working on a part-time basis, the limit of 1,022 hours are pro-rated.

If an application is approved, the Employment Fund (*Fonds pour l'Emploi*) pays 80% of normal salaries, capped at 250% of the Minimum Social Wage (*Salaire Social Minimum*). Currently, the amount is €5,354.98 per month for an unskilled employee aged 18 years.

### EUR 5,000 DIRECT AID FOR SMALL BUSINESSES

In the context of the crisis, the General Directorate for Small and Medium-Sized Enterprises (*Direction Générale des Classes Moyennes*) of the Ministry of the Economy has set up an emergency fund for very small companies and self-employed persons. Businesses with nine employees or less, and self-employed persons who have a valid business permit (which excludes most 'professionals' who are regulated) and have had to stop their activity due to a government decision in the context of the crisis can apply for immediate and non-refundable grant in the amount of €5,000. The grant is independent of other all other relief that may be granted.

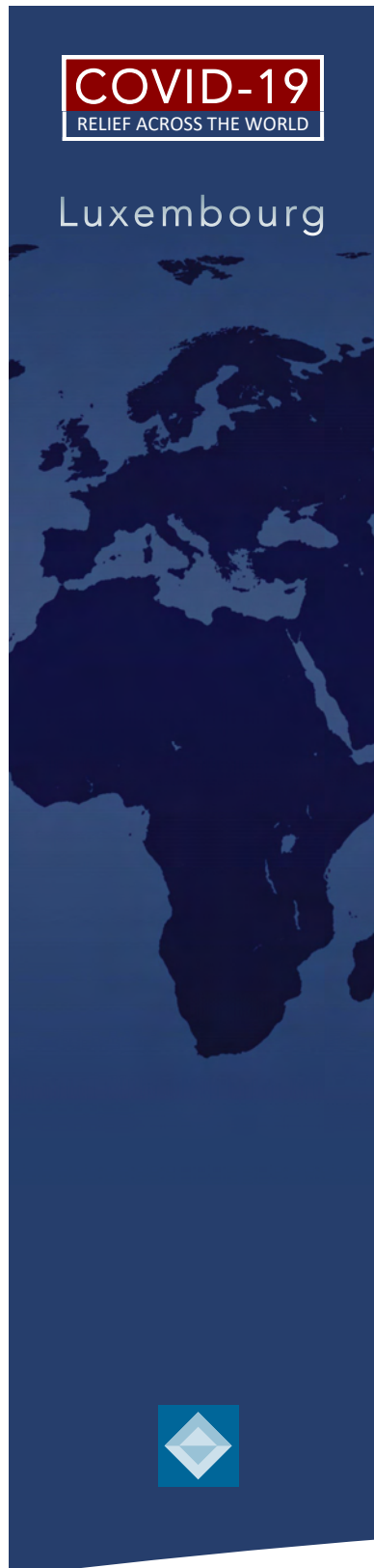
### GUARANTEE FACILITY FOR NEW BANK LOANS

A State guarantee scheme for new bank loans is available to help businesses under certain conditions. A guaranteed 85% new credit lines will be issued by the State and 15% by the participating banks for loans granted during the period from 18 March 2020 to 31 December 2020.

This scheme is intended as a subsidiary tool, after having resort, where possible, to the tools of the *Société Nationale de Crédit et d'Investissement* (S.N.C.I.), the *Office du Ducreire* or the European Investment Bank. These new credits are reserved for businesses that were viable before 18 March 2020 (State of Emergency). The assessment of whether a business was viable or not is the sole responsibility of the bank which provides the credit.

### NEW AID SCHEME

On 3 April 2020, an aid package to support those companies and self-employed people that find themselves experiencing temporary financial difficulties resulting from an exceptional, unforeseeable event on a national or international scale (such as the crisis) was enacted.



In order to benefit from the package, the following conditions must be met:

- The event must be recognized as having a detrimental effect on the economic activity of certain businesses over a specific period of time.
- The business must be experiencing temporary financial difficulties.
- The business must have engaged in its activity before the unforeseeable event.
- There must be a causal link between the difficulties and the event.

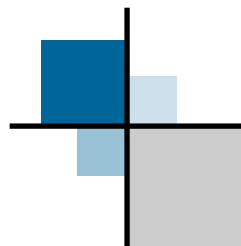
It is intended that a pandemic such as the coronavirus falls within the definition of an exceptional unforeseeable event.

Businesses and self-employed individuals can be reimbursed for business and personal costs and rent (capped at €10,000 per month per single undertaking (group)) during the period of crisis. Revenues of a professional activity pursued as a self-employed person are also eligible. The aid can cover up to 50% of the eligible costs and the maximum amount is capped at €500,000 per company.

The aid will take the form of a recoverable advance of funds. The repayment of the aid begins no earlier than 12 months after the first payment financial aid. The repayment schedule is negotiable and will take into account of the financial profitability. Interest is factored into the repayment schedule that is agreed to by the State.

The aid package is a standalone benefit and cannot cover other forms of aid that take into account the same costs. The application must be submitted to the Ministry of the Economy not later than 15 August 2020.

<sup>1</sup> <https://meco.gouvernement.lu/en/dossiers/2020/coronavirus-entreprises.html>



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# CORONAVIRUS STATE OF EMERGENCY MEASURES \*

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## THE DECLARATION OF THE STATE EMERGENCY

In order to deal with the public health emergency situation caused by the spread of COVID-19, a State of Emergency was declared on 18 March 2020 for the entire Portuguese territory. It covered a period of 15 days and anticipated possible renewals. With the declaration of the State of Emergency, the following rights are partially suspended:

- The right to travel and settle anywhere in the national territory.
- Property law and economic private initiative. This allows the Government to requisition service and property of health care units and industrial establishments and regulate how they operate and whether they should operate.
- Employee Rights. This includes control over workplace rules and the right to strike.
- The right to travel to and from the country. This includes the authority to establish border checks for persons and goods and health checks at points of entry to the country.
- The right to assemble and protest.
- The right of freedom of worship on a collective basis.
- The right of resistance.

The following measures were introduced by Presidential Decree pursuant the State of Emergency:

- The Government may impose the mandatory quarantine of all persons, either at home or in the hospital. It may quarantine entire areas that are hot spots. In addition, it may limit use of public roads to those performing professional activities, obtaining health care, assisting third parties or catering essential goods at the supermarket. Permitted travel should by non-essential persons should be unaccompanied.

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- The use of personal property and real estate, commercial and industrial places of business, companies, or production units of a business may be requisitioned by public authorities for specific use related to the state of emergency. Mandatory hours of operations for some businesses, mandatory closing of other businesses, and other modifications to the activity of the companies are also foreseen. Changes to the quantity, nature, or price of goods produced or traded and changes to the streams of distribution are also anticipated.
- Workers may be required to perform functions at different locations, times, and for a different entity. It is expected that this requirement will mainly cover workers in healthcare, civil protection, security, defense, production, distribution, and supply of essential goods and services. The goal is to ensure the functioning of vital sectors of the economy and the operation of critical networks and infrastructure.
- Even though border controls on the mobility of people and goods have already been established, necessary measures can be taken to ensure the international circulation of goods and services.

### IMPLEMENTATION OF THE STATE OF EMERGENCY

The implementation of the State of Emergency is the responsibility of the Government. Through Resolution of the Council of Ministers no. 2-A/2020 of 20 March, the Government proceeded to establish and execute measures to prevent the transmission of the virus and contain the spread of COVID-19.

According to the Resolution, the main measures imposed focus on:

- Limits transportation on Public Roads.
- Restriction on the functioning of retail spaces.
- Rules for the operation or suspension of certain types of facilities that must remain in operation.

#### Limitations on the Free Movement of People:

As of the beginning of 22 March, the circulation on public roads was allowed only for certain specified purposes.

- The performance of professional or similar activities that cannot be carried out remotely.
- The acquisition of essential goods and services.
- For the search of employment or in response to a job offer.

Private vehicles may continue to travel on public roads to carry out any of the activities or to refuel at gas stations. It is not required to fill out an appropriate form in order to travel on public roads. However, companies that remain in business may consider preparing such documents for workers in order to proactively address challenges that may arise for those who commute to work.

**Private Initiative Restrictions:**

*1. Remote Working- Requirement*

The Resolution establishes that it is mandatory for companies to allow workers to work remotely regardless of the employment relationship whenever the carried-out functions allow for this. It is contemplated that only few businesses will be allowed to avoid the remote working obligation. Examples include transport, health, factories and industry in general, construction and the provision of services in establishments that are generally not open to the public.

*2. Activities of the Trade Sector*

- Retail

Retail activities are suspended as of the entry into force of the Resolution, except for those that sell goods considered as being essential. This is addressed in Appendix I of this note.

- Wholesale Trade and other establishments

The following activities are not suspended:

- o Wholesale trade activities.
- o Establishments that are exclusively engaged in home delivery, basically the provision of goods with delivery at the door of the establishment or through mail. Note that in these cases, access to the interior of the establishment by the public is prohibited.

*3. Provision of service activities*

Every business involving activities carried on in establishments open to the public is suspended. Exceptions are provide for those businesses that provide basic services or other services regarded as essential, such as agri-food production and distribution, and maintenance and repair establishments for motor vehicles and motorcycles. Appendix II provides additional detail on these establishments.

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Restaurants and similar establishments may maintain their activity, but only for the sole purpose of home delivery or consumption outside of the establishment.

#### 4. *E-commerce, remote service and special cases*

The following activities are not suspended:

- E-commerce.
- Provision of service activities provided at a distance or through a digital platform.
- Retail trade activities or of service activities provided along a motorway or inside hospitals and airports.

In some circumstances, small retail trade establishments may operate, provided they obtain authorization. It is expected that authorization will be granted only in special cases.

#### 5. *Public services*

Most offices of the public administration, such as city hall, tax, and social security, are closed. While it is possible to make appointments at these offices, these appointments are few and far between.

#### 6. *General Comments*

**Rental contracts:** As is to be expected, the closure of a vast majority of retail activities will create significant pressure on tenants that have an obligation to pay rent whilst not receiving any income. The legislation states that the closure of establishments cannot be invoked by owners as justification for the termination of non-housing lease agreements or other forms of agreement for the use of real estate.

**Priority face-to-face service:** In retail or in the provision of service establishments which maintain their activity, people requiring a special duty of protection must be given priority.

**Safety and hygiene rules:** Retail or the provision of service establishments that remain open must ensure (i) a minimum distance of 2 meters between persons, (ii) customer stays are limited for the time strictly necessary for the purchase of products, and (iii) no one is permitted to consume products on premises.

**Personal protection:** Activities which remain in operation, in particular wholesale establishments, must comply with the health authorities' recommendations regarding hygiene rules and distances between people



## CONCLUDING REMARKS

Two somewhat contradictory principles permeate the Government's response to the COVID-19 emergency. On one hand, the failure to comply with the rules implementing the declaration of the State of Emergency is considered a crime that is punishable by law. The penalties are summarized in Appendix III. On the other hand, the declaration of the State of Emergency does not compromise the rule of law in Portugal and the rights of individuals to life, personal integrity, civil capacity citizenship, the non-retroactive application of criminal law, and freedom of expression. This somewhat contradictory approach illustrates advice first given by William Shakespeare that desperate times breed desperate measures. When the COVID-19 virus dissipates, both the desperate times and the desperate measures will dissipate as well.

## APPENDIX I

### Activities that are closed

Recreational, leisure and entertainment activities:

- Nightclubs, bars, and dance or banquet halls
- Circuses
- Amusement parks and leisure parks for children and similar
- Water parks and zoos, without prejudice to the access of workers regarding the care of animals
- Premises for leisure sporting activities
- Other similar premises or facilities

Cultural and artistic activities:

- Auditoriums, cinemas, theatres and concert halls
- Museums, monuments, palaces, archaeological sites, whether national, regional, municipal, public or private, without prejudice to the access of workers for the purposes of conservation and security
- Libraries and archives
- Squares, bullfighting arenas and facilities
- Art galleries and exhibition halls
- Conference centres, community halls, conference rooms and multipurpose pavilions

Sports activities, except those intended for the activity of high-performance athletes:



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- Soccer, rugby and similar fields
- Enclosed pavilions and spaces
- Futsal, basketball, handball, volleyball, roller hockey and similar pavilions
- Shooting ranges
- Tennis, paddle and similar courts
- Skating, ice hockey and similar rinks
- Pools
- Boxing, martial arts and similar rings
- Speedways for racing motorcycles and motor vehicles
- Velodromes
- Horse racing tracks
- Multisport pavilions
- Gyms and academies
- Athletic tracks
- Stadiums

Activities in public/private areas and roads

- Cycling, motorcycling, and car racing except by high performance athletes
- Nautical competitions and exhibitions
- Aeronautical competitions and exhibitions
- Parades and popular festivals or folkloric exhibits of any kind

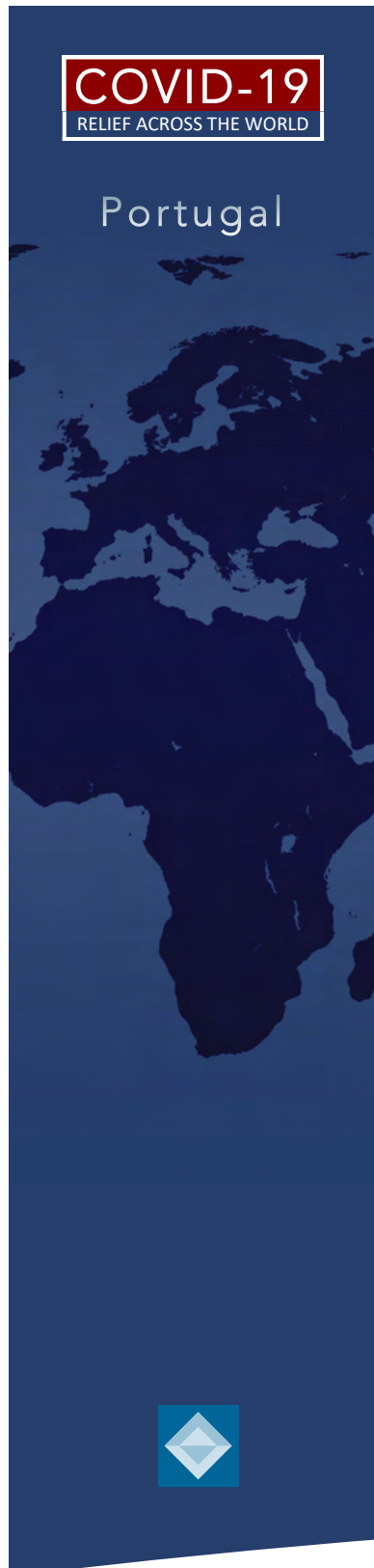
Gaming and gambling activities:

- Casinos
- Games of chance establishments, such as bingos or similar
- Game rooms and recreation halls

Hospitality and catering activities:

- Restaurants, cafes, cafeterias, tea houses except for takeaway service
- Snack bars
- Hotel bars and restaurants other than for the delivery of meals to guests
- Terrace bars
- Vending machines

Thermal and spas or related establishments.



## APPENDIX II

Activities that may remain open, as they are considered to be essential in the present circumstances

- Minimarkets, supermarkets, hypermarkets
- Fruit shops, butcher shops, fish mongers, bakeries
- Food markets
- Agri-food production and distribution
- Fish markets
- Restoration and beverages, under the specific terms of the present decree
- Confection of ready-to-take meals home, under the specific terms of the present decree
- Medical services and other medical or social support services
- Pharmacies and places of sale of non-prescription medicines
- Medical and orthopedic establishments
- Opticians
- Cosmetic and hygiene establishments
- Establishments of natural and dietary products
- Essential public services such as water, electricity, natural gas and channeled liquefied petroleum gas, electronic communications, postal services, waste water and effluent collection and treatment, urban solid waste management, urban hygiene services, and passenger transport services, all including repair facilities
- Stationery and tobacconists
- Social games
- Veterinary clinics
- Establishments for the sale of pets and pet food
- Establishments for the sale of flowers, plants, seeds and fertilizer
- Dry cleaning and washing establishments for textiles and fur
- Drugstores
- Hardware stores and establishments for the sale of D-I-Y materials
- Petrol stations
- Domestic fuel outlets
- Establishments for the maintenance and repair of motor vehicles and motorcycles, tractors and agricultural machinery, including parts and accessories, and towing services

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- Establishments for the sale and repair of household appliances, computer and communications equipment and repair
- Banking, financial and insurance services
- Funeral and related activities
- Home maintenance and repair services
- Home security or surveillance services
- Cleaning, disinfection, and similar activities
- Home delivery services
- Tourist establishments, except campsites, and related guest catering and beverage services
- Services that guarantee student accommodation
- Activities and establishments set out in the preceding paragraphs, though integrated into shopping centers

### ANNEX III

#### Description of the criminal penalties associated with the noncompliance of the limited exercise of the rights listed in the Declaration of the State of Emergency

The Declaration of the State of Emergency provides for the possibility of mandatory and compulsory confinement of citizens at home and restrictions on the movement on public roads, unless properly justified. Failure to comply with the measures enacted in that context may have several criminal consequences.

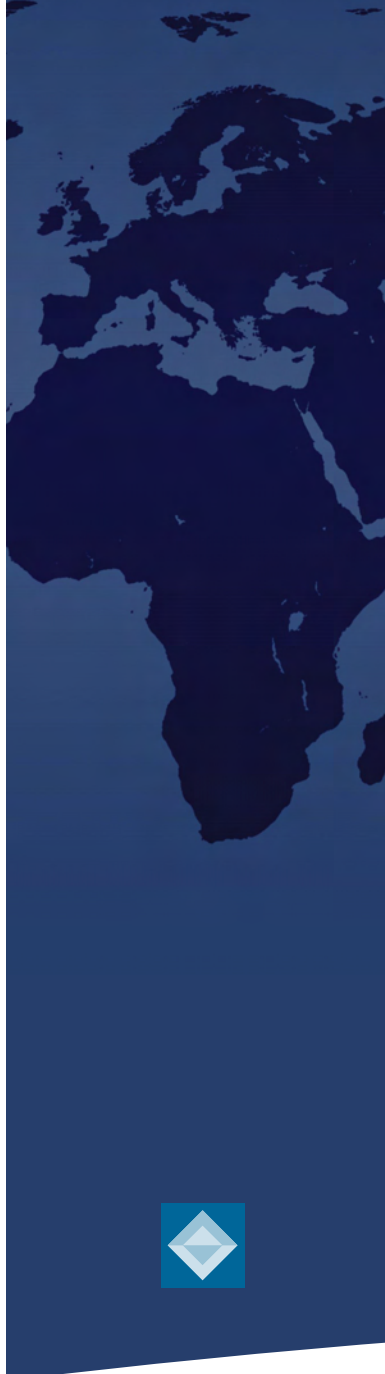
- With the declaration of a state of emergency, the right of movement in any part of the national territory was partially suspended. Persons who disobey the guidelines may be convicted of the crime of civil disobedience and are subject to a prison sentence of up to one year or a fine that ranges between €50 and €60,000.

In addition, the right to private economic initiative has been partially suspended due to the declaration of the state of emergency. Individuals and legal persons who do not comply with the rules may be convicted of the crime of civil disobedience and are subject to a prison sentence of up to one year.

For example, a bakery that does not comply with the order to remain open baking bread may be convicted of the crime of civil disobedience. The responsible officer may be convicted of the same crime. The same exposure exists if the bakery fails to comply with an

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order to close operations. Individuals are subject to a fine that ranges between €50.00 and €60,000.00. Businesses are subject to a fine that ranges between €1,000 and €1,200,000.

- With the declaration of a state of emergency, workers' rights were partially suspended. Now, public authorities may direct employees of public or private entities to work in a different place, in a different entity, and under different working conditions and schedules. This provision likely is directed at employees in the healthcare, civil protection, security and defense sectors. The exercise of the right to strike is suspended to the extent that a strike may jeopardize the functioning of critical infrastructures or health care units and their suppliers of essential goods and services.

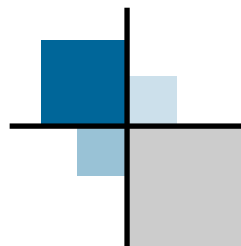
Those workers who do not follow proper instructions may be convicted of the crime of a civil disobedience which is punishable by a prison sentence of up to one year or a fine that ranges between €50 and €60,000.

- With the declaration of the state of emergency, the right of assembly was partially suspended. Restrictions may be imposed by competent public authorities in order to reduce the risk of contagion and implement measures to prevent and combat the epidemic. In the event of an intentional failure to disburse after having received a proper order, individuals may be convicted of the crime of civil disobedience. Again, this is punishable by imprisonment of up to one year or a fine that ranges between €50 and €60,000.

\* This article is based on material that appeared originally on the TELLES Advogados website.

Original document can be found at:

TELLES Advogados | Coronavirus | State of Emergency Measures



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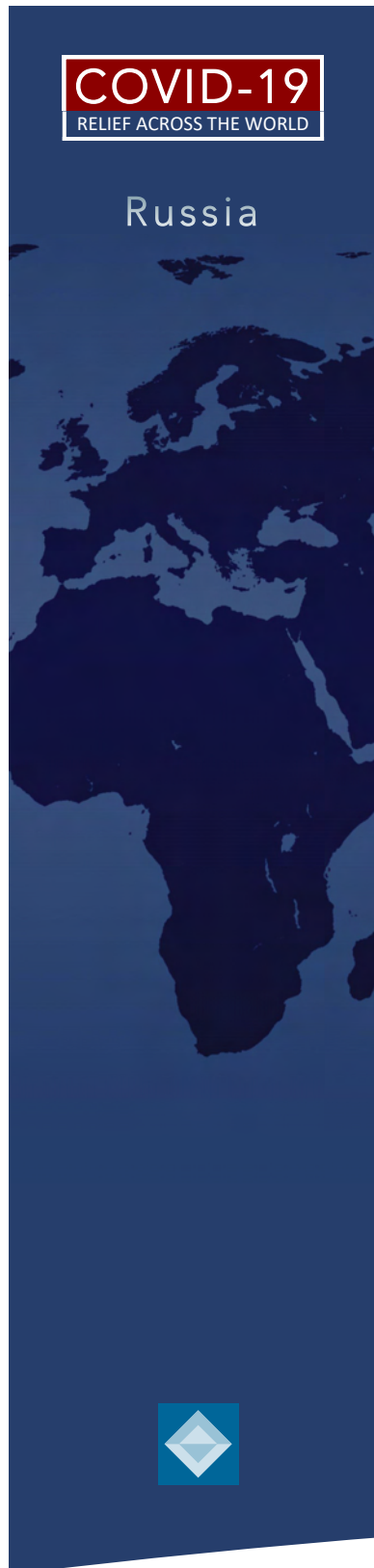
## COVID-19 TAX MEASURES RUSSIAN FEDERATION

By Grigory Nistratov  
*Forward Legal (Russia)*

### WHAT IS DONE ALREADY

#### Tax

- No new tax examinations will begin until after 1 May 2020. All tax probes that were already started are now suspended until that date.
- No tax examination measures that require personal contact with taxpayers will occur until after 1 May 2020.
- No examinations regarding currency matters will take place until after 1 May 2020.
- The deadline for filing annual tax returns was postponed 31 March 2020.
- The liability to pay all taxes except V.A.T. is deferred for six months for companies from the following sectors:
  - Air transportation
  - Airport activities
  - Trucking
  - Culture
  - Leisure and entertainment
  - Fitness activities and sports
  - Travel agencies and other organizations in the field of tourism
  - Hotel business
  - Catering
  - Education and non-governmental educational institutions
  - Organization of conferences and exhibitions
  - Provision of domestic services to the population.
- The liability to pay social security is deferred for six months for micro-companies.



### Non-Tax

Moratorium for bankruptcy for entities of sectors of the economy. Russian courts will not accept bankruptcy petitions filed by the creditors within six months period.

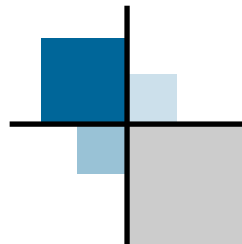
### WHAT IS SCHEDULED

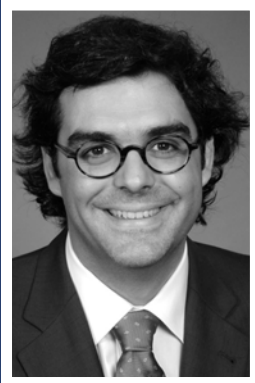
#### Tax

- Russia probably will change its income tax treaties with some countries to increase withholding tax for dividends, interest, and royalties up to 15%. If other countries refuse to accept these changes, income tax treaties with these countries will be canceled.
- Russia may begin to charge tax on interest on savings at Russian banks with a balance in excess of ₺1 million at the rate of 13%.

#### Non-Tax

- Russia has limited international flights except for cargo flights.
- All courts are closed until April 30 except for extraordinary cases related to criminal proceedings.
- During the period beginning 30 March 2020 and ending 30 April 2020 all business is shut down except for companies engaged in activity that are essential. Moscow and some other regions have enforced a quarantine.
- COVID-19 may be acknowledged as a force-major for business purposes in Russia. The Chamber of Commerce of Russia issues certificates confirming the existence of a *force majeure* after evaluating foreign trade contracts. Regional Chambers of Commerce issue certificate for domestic contracts.





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## COVID-19: SPANISH TAX AND LEGAL MEASURES

By Luis J. Durá

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As a result of the global health crisis caused by COVID-19, the Spanish government declared the state of alert on 14 March 2020. Since the declaration, different tax and legal measures have been adopted both by the Government and by the Autonomous Communities, in order to help parties most affected by this crisis, including workers and companies.

As a result of the constantly evolving situation of the health crisis, the legal and tax measures implemented by the Spanish Government are subject to continuous amendments. Furthermore, it is expected that most of the measures will be called off once the state of alert is over.

It is important to highlight that due to the characteristics of the Spanish legal system, many Autonomous Communities and Councils have also approved complementary support measures for workers and companies.

### TAX DEFERRAL

Firstly, the Spanish Government has approved an automatic deferral for payment and filing of the first quarter of 2020 tax returns until 20 May 2020. The benefit of deferral is available to businesses, including companies and self-employed individuals, whose turnover in 2019 was less than €600,000. The taxes that qualify for the automatic deferral are V.A.T., first advance of corporate tax, and withholding tax on employees and professionals' income.

Secondly, the Spanish Government has granted the option of requesting for tax deferrals beyond 20 May 2020. Companies and self-employed individuals whose turnover in 2019 was less than €6,010,121.04 are entitled to benefit from it. These tax deferrals may be implemented until 20 November 2020. While no interest will be imposed on the late payment for the first quarter, an interest rate of 3.75% will be charged for the following period. The benefit of tax deferral for an amount of up to €30,000 can be claimed without providing a guarantee or collateral by the taxpayer.

## EXTENSION OF DEADLINES IN TAX AND LEGAL PROCEEDINGS

The tax deadlines for tax assessments that initiated before the state of alert have been extended to the later of 30 April 2020 or the end of the state of alert. In particular:

- Deadlines for paying tax debts issued and notified by the Spanish tax authorities.
- Deadlines related to request of taxpayer's information by the tax authorities.
- Deadlines for filing appeals and administrative claims.

Furthermore, this elapsed time during the duration of the state of alert would not be included for the purpose of determining the maximum length of any procedures for application of taxes, penalties or appeals carried out by the Spanish tax authorities. Likewise, all statute of limitations periods related to any action or right included in the domestic tax rules are suspended.

Similarly, for judicial procedures (except for urgent actions, like protection of fundamental rights and freedoms), the procedural deadlines have been suspended.

## LABOUR MEASURES

In the labour area, Spanish Government has established that *force majeure* will be deemed to exist when a suspension or reduction in an employee's working hours is a direct consequence of COVID-19. In particular, *force majeure* exists in the following cases:

- When the closure of a business activity (because there are places with public affluence) has been decreed by the government.
- When there are shortcomings related to urban mobility.
- When there is a lack of supplies.
- When there is a risk of contagion in the workforce.

The existence of *force majeure* must be established by the labour authority of the E.R.T.E. (temporary layoff procedures). It must involve legal representatives of the workforce. Also, during the period in which *force majeure* exists, neither the workers are required to work nor the employer is obligated to pay wages. However, the workers affected would obtain a subsidy from the Spanish Government, during the qualifying period.



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Also, where possible, taking into account the characteristics of the business activity and the equipment at its disposal, the company must adopt measures that enable teleworking. Further, employees may adapt or reduce their working hours. An employee may adapt by adjusting the work schedule, changing the workplace or opting to telework. As an alternative, an employee may reduce the working hours by up to 100% with a proportional reduction in the salary.

## COMPANY MEASURES

In addition to several tax deferrals and temporary employment relief procedures, Spanish companies are entitled to the following tax and legal relief measures if their 2019 turnover did not exceed €6 million.

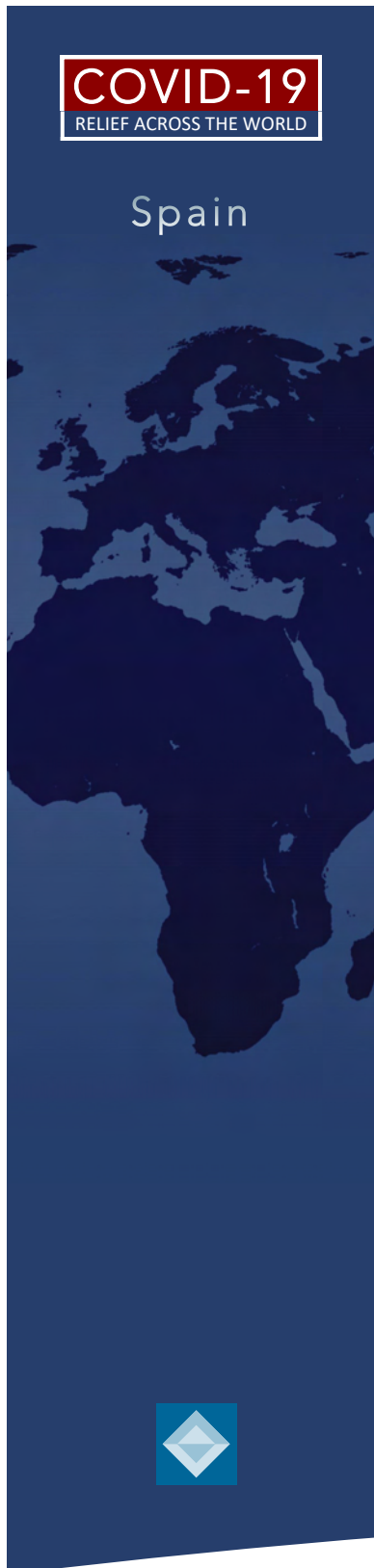
Firstly, companies may be able to determine its first 2020 advance corporate tax payment based on the first quarter profits and losses instead of determining it in accordance with previous year tax benefit.

Secondly, companies with less than €8 million turnover and self-employed individuals whose activities have been interrupted or reduced by at least 75%, may request a deferral for the payment of their rental fees. The deferral will be determined based on the number of properties owned by the landlord:

- If the landlord has more than 10 properties, the tenant can request a rent deferral for up to four months.
- If the landlord has less than 10 properties, the tenant can request the use of the security deposit paid at the time of execution of the contract to pay the rent.

## SELF-EMPLOYED INDIVIDUALS MEASURES

Spanish government subsidies have been approved for self-employed individuals who do not have any outstanding debt with Social Security and whose activities have been interrupted as a result of the measures adopted by the Government or have suffered a 75% decrease in their turnover. The qualified self-employed individuals can request for an unemployment payment from the Spanish Social Security. The final amount will be determined based on their Social Security contributions, however, will not be less than €661. Furthermore, while the state of alert lasts, the self-employed individuals will not be required to pay their monthly social security contributions. They can also request for a rental deferral on the same terms as companies. Moreover, the self-employed individuals, who normally pay taxes in accordance with a standardized method, are allowed to pay quarterly taxes based on the profit and less approach.



## FLEXIBILITY OF CORPORATE RULES

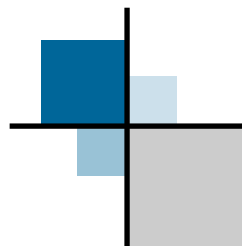
In the corporate field, measures related to the submission of company annual accounts and related compulsory company books have been also adopted.

The deadline for drafting the annual financial statements by the Board of Directors has been extended to three months after the date of the end of the alert state. The new deadline for the final approval of the annual accounts in the General Shareholders Meeting is three months from the end of the period for drawing the accounts. In the case of listed companies, the period to hold the general shareholder's meeting has been extended until 30 October 2020. Further, the due date for legalizing company accountancy books and the minutes of the company management bodies has also been extended to four months from the end of the state of alert. Finally, companies required to get their financial accounts audited by an independent expert must do so within two months from the date of the end of the state of alert.

## OTHER MEASURES

Pension plan investors are allowed to receive their vested rights if certain requirements are fulfilled. In this regard, unemployed individuals by means of a layoff procedure and self-employed individuals who have ceased operations as a result of the public health crisis will be able to receive their pension vested rights.

Finally, the Spanish Official Credit Institute (I.C.O.) has approved loans that are eligible to be granted to self-employed individuals and companies affected by COVID-19 provided they didn't already have outstanding debts with the Spanish Administration before the alert state. Thus, said loans and renewals conceded by financial institutions to companies and self-employed individuals would be guaranteed by the Spanish above-mentioned institution.



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By **Stephan Neidhardt**

*Walder Wyss LTD. (Switzerland)*

### **FILING DEADLINES FOR TAX RETURNS**

The filing deadline of my personal tax return 2019 expires on 31 March 2020. Do I have to ask for a deadline extension?

Various cantons introduced automatic filing deadline extensions (usually initially set to 31 March 2020) of the tax return of individuals subject to ordinary taxation:

- Aargau: 30 June 2020
- Appenzell Ausserrhoden: 31 May 2020
- Appenzell-Innerrhoden: None (initial deadline 30 April 2020)
- Basel-Land: 30 June 2020
- Basel-Stadt: 31 May 2020
- Bern: 15 September 2020
- Fribourg: 30 June 2020
- Geneva: 31 May 2020
- Glarus: 31 May 2020
- Grisons: 30 June 2020
- Jura: 31 July 2020
- Lucerne: 31 May 2020
- Neuchatel: None (initial deadline 28 February 2020)
- Nidwalden: 30 June 2020
- Obwalden: 31 August 2020
- Schaffhausen: 30 June 2020
- Schwyz: 31 May 2020
- Solothurn: 31 July 2020
- St. Gallen: 31 May 2020
- Thurgau: None (initial deadline 30 April 2020)

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- Ticino: 30 June 2020
- Uri: 31 May 2020
- Valais: 31 May 2020
- Vaud: 30 June 2020
- Zug: 30 June 2020
- Zurich: 31 May 2020

Longer deadline extensions are generally available upon request. Please note that different deadlines may be applicable in certain cases, e.g. to tax returns filed by self-employed tax-payers or in a canton in which the taxpayer is only subject to limited tax liability.

Several cantons introduced deadline extensions for the request of tariff corrections by individuals subject to payroll taxation:

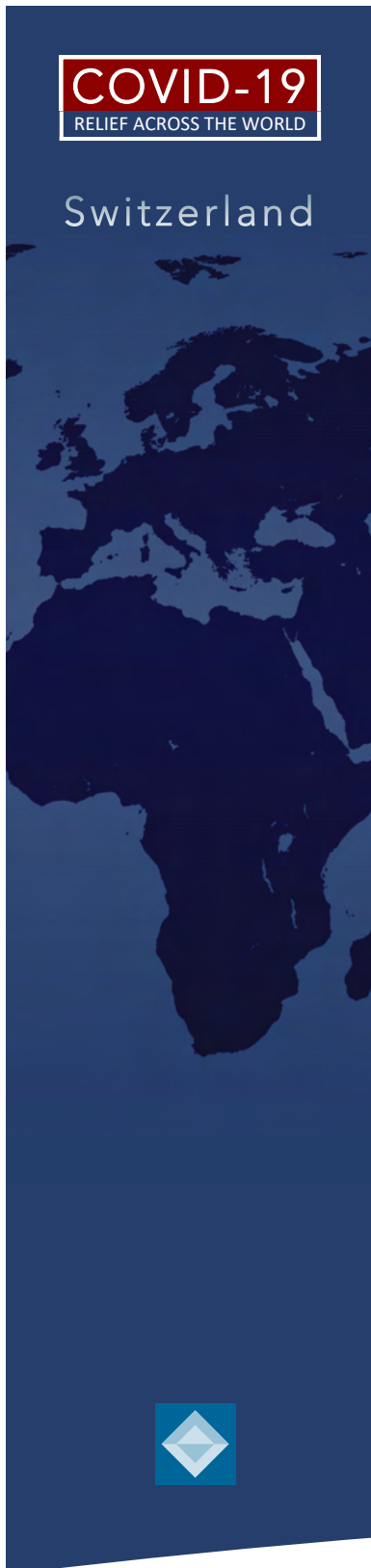
- Basel-Land: 30 September 2020
- Geneva: 31 May 2020
- Schwyz: 31 May 2020
- Uri: 31 May 2020
- Valais: 31 May 2020
- Zug: 30 June 2020

### **Is the filing deadline of a legal entity's tax return 2019 automatically extended?**

Few cantons introduced automatic extensions of the filing deadlines for the tax return 2019 of legal entities:

- Aargau: 30 September 2020
- Basel-Land: 30 September 2020
- Bern: 15 September 2020
- Geneva: 31 May 2020
- Jura: 31 July 2020
- Nidwalden: 30 September 2020
- Ticino: 30 September 2020

This being said, in various cantons, the initial filing deadlines of tax returns of legal entities expire in the second half of the year in any case (e.g. in Zug and Zurich, 30 September).



## PAYMENT TERMS

**I received the provisional for my direct federal taxes 2019. Do I have to pay it timely?**

In principle, the due date has not changed. However, as part of the Corona measures, all invoices regarding federal income and profit taxes with a due date between 1 March and 31 December 2020 may be paid until 31 December 2020 the latest without incurring any late interest (the Swiss government's ordinance of 20 March 2020 and the federal tax administration's circular letter of 24 March 2020 in this respect can be downloaded in German and in French). This new and provisional rule is also valid for all invoices received for previous tax years with due dates between 1 March and 31 December 2020.

**Did the payment terms change for my V.A.T. and customs?**

The accrual of late interest on V.A.T. and customs is suspended between 20 March and 31 December 2020. However, please be aware that this rule does not change the duty to file V.A.T. declarations on time.

**Are there any deferred payment terms available for my cantonal and communal taxes 2019 and/or 2020.**

There is no general answer to this question. Please be aware that in some cantons, the respective competence to delay due dates without paying late interest is with the cantons, in other cantons with the communities. For instance, the canton of Zurich lowered its late interest rate for cantonal and communal tax purposes from 4.5% to 0.25% between 1 May 2020 and 31 December 2020. If you have difficulties to pay your cantonal/communal taxes on time, please contact the respective tax authorities and you may ask for an approval for a late payment or for a payment in instalments. In some cases, it is possible to apply online.

**Can I change the amount of taxable income expected in 2020?**

Yes, if your provisional invoice for taxes to be paid for 2020 is too high, you should contact the respective tax authority (federal/cantonal/communal) in order to ask for a reduction of your provisional income tax base 2020. Online applications for adjustments are frequently possible.

**Is the late interest for withholding tax and stamp duties also deferred?**

No, unfortunately not. Please be aware that the late interest for withholding taxes and stamp duties is still 5% and therefore it is very much advisable to pay these taxes on time.

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**Will the cantonal and federal tax authorities continue to notify decisions in tax matters?**

Generally yes. However, certain cantons have communicated that they have reduced their activities and some cantons have indicated that they will not issue any decisions until further notice.

**Are there any deferred payment options available with regard to social security?**

Yes, companies and self-employed individuals may ask for an interest-free payment delay for social security contributions. They may also request an adjustment of their monthly or quarterly down payments, based on the new (reduced) income situation.

### PROVISIONS IN ANNUAL ACCOUNTS 2019

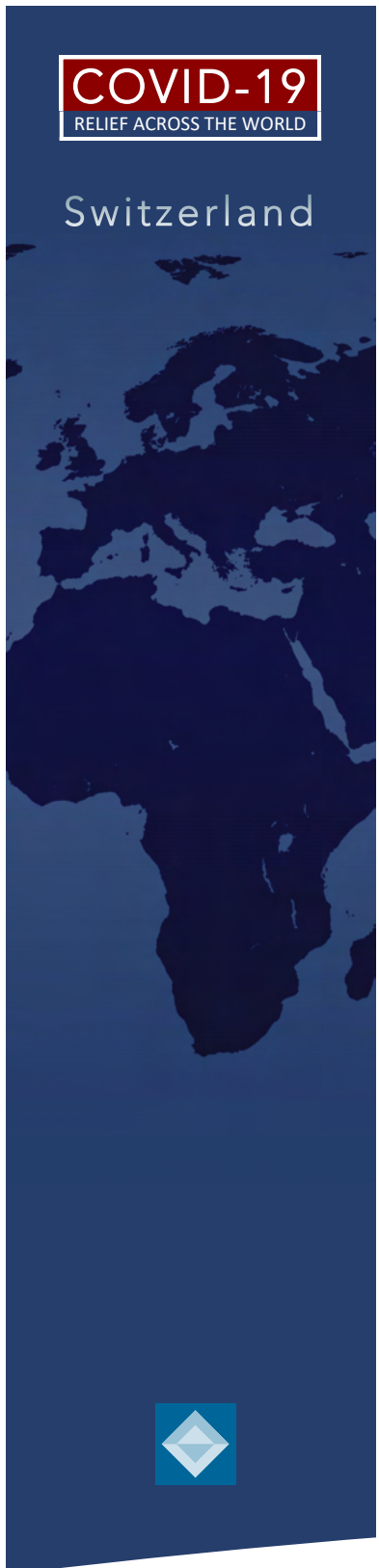
**Is it possible to deduct a “corona-provision” from the taxable income 2019?**

Generally no. The annual accounts prepared in accordance with commercial law are generally relevant for tax purposes. According to commercial law, a provision must be booked in the annual accounts 2019 if an “event in the past” leads to the expectation of a cash outflow in future years. Such a provision would generally be accepted by the tax authorities.

Under commercial law, it is doubtful whether there is a requirement or obligation to book a “corona-provision”. For example, the Swiss expert association for auditing, taxes and fiduciary advice “expertsuisse” (statement published on 20 March 2020) considers that the coronavirus does not qualify as such an “event in the past” for the annual accounts 2019. However, businesses have an option (but not an obligation) to book a provision if it is made in order to ensure long-term prosperity of the business. In “normal times”, such optional provisions are typically not tax deductible.

However, the cantons of Aargau, Thurgau, Valais and Zug announced that they will recognize extraordinary tax-deductible provisions for cantonal and communal tax purposes in tax period 2019. Such provisions are allowed for legal entities or self-employed taxpayers and must be dissolved in tax period 2020. Please refer to specific information, such as maximum amounts of the provision, published by the respective tax authorities. In contrast, the cantons of Schwyz and St. Gallen announced that no corona-related provisions will be accepted for tax purposes in the 2019 tax period.





## PERIOD FOR APPEAL

Are there any deadline extensions or suspensions applicable to contentious legal proceedings in tax matters?

The running of legal deadlines (i.e. typically appeal deadlines) is generally suspended by law in Switzerland during the seven days before and the seven days after Easter. Thus, this year there is a general legal suspension of deadlines between 5 and 19 April 2020. A deadline suspension means that in order to determine the running of a deadline, days are not counted during the suspension period. As an example, a deadline that would theoretically end on 5 April therefore effectively ends on 20 April. As part of the Corona measures, the Swiss government ordered on 20 March 2020 that the suspension of deadlines (where a suspension around Easter is foreseen by law) would start immediately, i.e. on 20 March 2020 already and not only on 5 April 2020 (The government's ordonnance can be downloaded in German, French and Italian). There are however important exceptions to the principle of deadline suspension, one being cantonal tax proceedings, where no suspension of deadlines is legally foreseen in the first place. Therefore, the Swiss government's measure – at least currently – does especially not apply to contentious tax matters pending before cantonal tax authorities or before cantonal courts. The immediate suspension however does apply to tax matters pending before the Swiss federal tax administration (*Einsprache, réclamation, reclamo*), before the federal administrative tribunal and before the Swiss Supreme court.

I received my personal tax assessment 2018 (federal direct tax and/or cantonal and communal taxes) in March 2020. Is the 30-days deadline to appeal automatically extended?

No, it is not.

I recently received a decision in tax matters from a cantonal tax court subject to appeal before the Federal Supreme court. Is the 30-days deadline to appeal automatically extended?

Yes, the suspension of deadlines applies to proceedings before the Federal Supreme court.

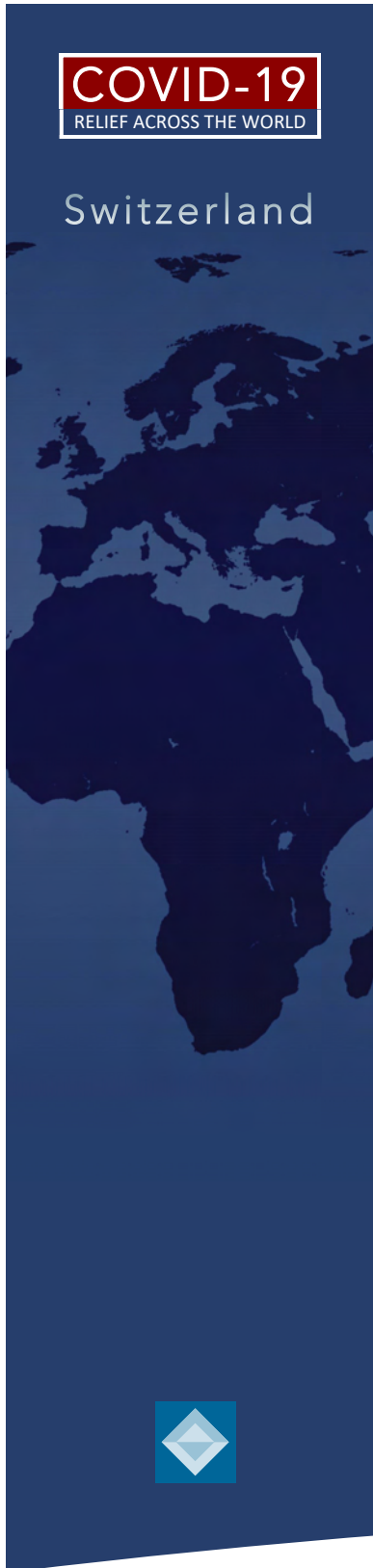
I recently received a decision from the Swiss federal tax administration subject to appeal before the Federal administrative tribunal. Is the 30-days deadline to appeal automatically extended?

Yes, the suspension of deadlines applies to proceedings before the Federal administrative tribunal.

Due to the virus, I missed the deadline to challenge my tax assessment 2018. May I still challenge it?

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Missed deadlines can be restored only under certain very specific circumstances, such as grave illness. In general, missing a deadline due to external causes is not sufficient grounds to restore a deadline. However, the Zurich tax administration communicated that it considered the current extraordinary situation to be a sufficient justification to restore missed deadlines. In such case, a respective demand must be addressed in writing to the Zurich tax administration and it must meet the other requirements of a valid objection (*Einsprache*). Note that this liberal approach does currently not necessarily apply to the tax court nor to the administrative court of the canton of Zurich. Other cantons may also adopt another attitude.

**I recently received an information request from the cantonal tax authorities regarding my personal tax return 2018. Is the deadline to respond automatically extended?**

No, it is not automatically extended. However, given the current situation, if you actively contact the tax administration before the end of the deadline it is very likely that they will accommodate you and extend the deadline.

### CROSS-BORDER COMMUTER

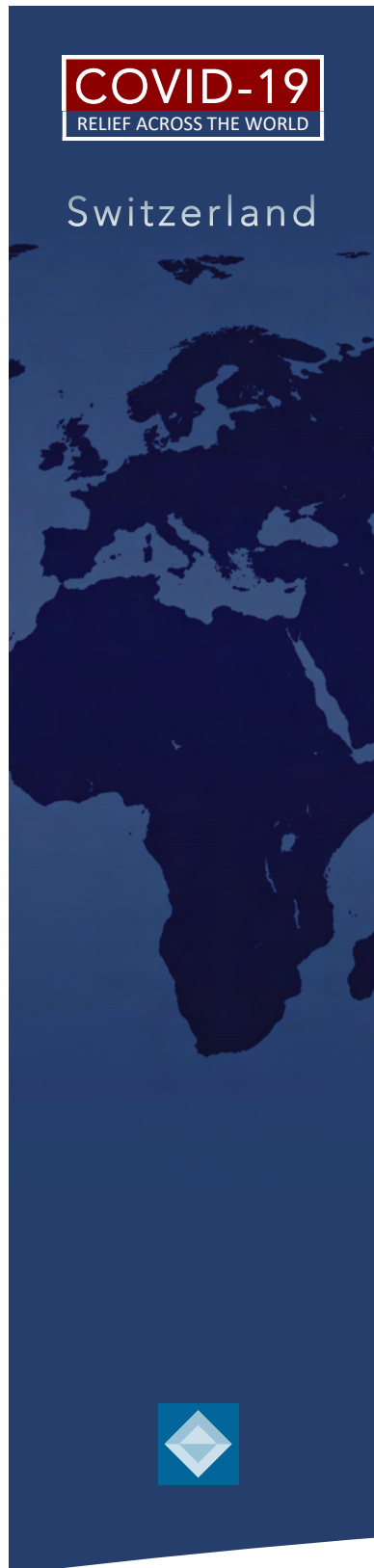
**I am a cross-border commuter. Due to the virus, my employer requested me to work from home. Do I lose my tax status as a cross-border commuter?**

According to the double tax treaty between Switzerland and Germany and the agreement of certain cantons with France, cross-border commuters are persons who return "regularly" or "usually daily" to their country of residence from their place of work. As a general rule, two border crossings per day are required.

The outbreak of COVID-19 has led to an increase in the number of home office working days demanded by employers. Therefore, France and Switzerland have concluded an agreement according to which home office working days due to COVID-19 shall not affect the cross-border commuter status of persons and, hence, change the taxation of these persons (in other words, the cross-border commuter taxation remains unaltered).

Currently no such agreement is in place with Germany. However, several cantonal tax administrations have informed Walder Wyss by telephone that, in their view, there should be no change due to increased home office days as a result of COVID-19 regarding cross-border commuters from Germany.





This has also been communicated by the Chamber of Commerce Germany-Switzerland on its homepage.

## SOCIAL SECURITY

I am living in an E.U./E.F.T.A. country and I am subject to social security in Switzerland because I am usually not physically working as an employee in my domicile country for more than 25% of the time. Does this status change because I am requested to work from home due to the virus?

According to the Federal Social Insurance Office (F.S.I.O.), the Swiss authorities consider the current situation as a state of emergency. The F.S.I.O. takes account of this fact in that, from a Swiss perspective, cross-border commuters who generally work in Switzerland and who are now requested to work from home as a result of COVID-19 and thereby exceed the 25% limit, continue to be subject to the Swiss social security system. The French Social Security Department is also of the view, that due to exceptional circumstances, the employee remains subject to social security in the country she or he is usually working. The Chamber of Commerce Germany-Switzerland has also communicated on its homepage that in their view the same is true for German cross-border commuters.

\* This article is based on material that appeared originally on the Walder Wyss Attorneys at Law website.

### The contributions of the following persons are acknowledged:

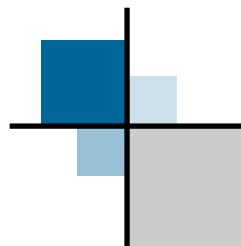
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Original document can be found at:

[walderwyss.com/user\\_assets/downloads/FAQ-Tax.pdf](http://walderwyss.com/user_assets/downloads/FAQ-Tax.pdf)



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## **CORONAVIRUS INFORMATION HUB: F.A.Q. FINANCINGS/FINANCIAL RESTRUCTURINGS\***

By Theodor Härtisch

*Walder Wyss LTD. (Switzerland)*

### **Which types of COVID-19 bridge loans are there?**

As a rule, there are two so called COVID-19 Credits:

- Ordinary COVID-19-Credit up to CHF 500,000 (100% guaranteed by the Swiss Confederation); and
- COVID-19-Credit-Plus for amounts in excess of CHF 500,000 up to CHF 20 million (85% guaranteed by the Swiss Confederation).

### **Who may render a COVID-19 credit request?**

Basically, all companies and self-employed persons (i) being domiciled in Switzerland; (ii) being severely economically affected by the COVID-19 pandemic; (iii) being fully-funded before 1 March 2020 and (iv) having an annual turnover not exceeding CHF 500,000,000, may render such credit request.

In addition thereto, applicants would not be entitled to a COVID-19-Credit if they already received services under the emergency programs for sports and cultural organizers.

### **Which interest rate for COVID-19 bridge loans applies?**

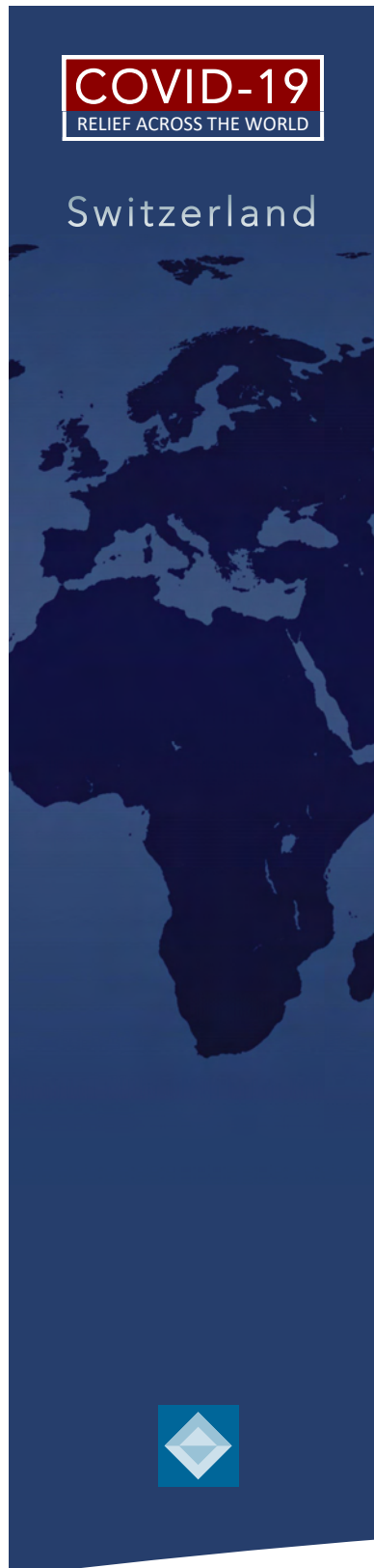
The interest rate for ordinary COVID-19-Credits up to CHF 500,000 is 0% per annum.

The interest rate for a COVID-19-Credit-Plus up to CHF 20 million is 0.5% per annum. However, this only holds true as to the 85% guaranteed by the Swiss Confederation. For the remaining 15% credit risk, borne by the respective financial institution, an appropriate interest rate will be agreed between the respective financial institution and the borrower in question.

### **Which financial institutions are participating in the COVID-19 bridge loans?**

In addition to Post Finance Ltd., various banks are participating in the COVID 19 bridge loans. A complete, continuously updated list can be found at: <https://covid19.easygov.swiss/banken/>

As a rule, the COVID-19 credit request should be submitted to the financial institution, the company or the self-employed person already has banking relations with.



### When must COVID-19 credit requests be applied for at the latest?

A COVID-19 credit request may be rendered between 26 March 2020 and 31 July 2020.

### May financial institutions decline COVID-19 credit requests?

Yes, financial institutions may decline such credit request, e.g. on grounds of incorrect or incomplete credit requests (as example in case of a COVID-19-Credit) or on grounds of an insufficient credit check (as example in case of a COVID-19- Credit-Plus).

### How does COVID-19 bridge loan applications work, briefly summarized?

There are two different procedures:

COVID-19-Credit (CHF 1 to CHF 500,000):

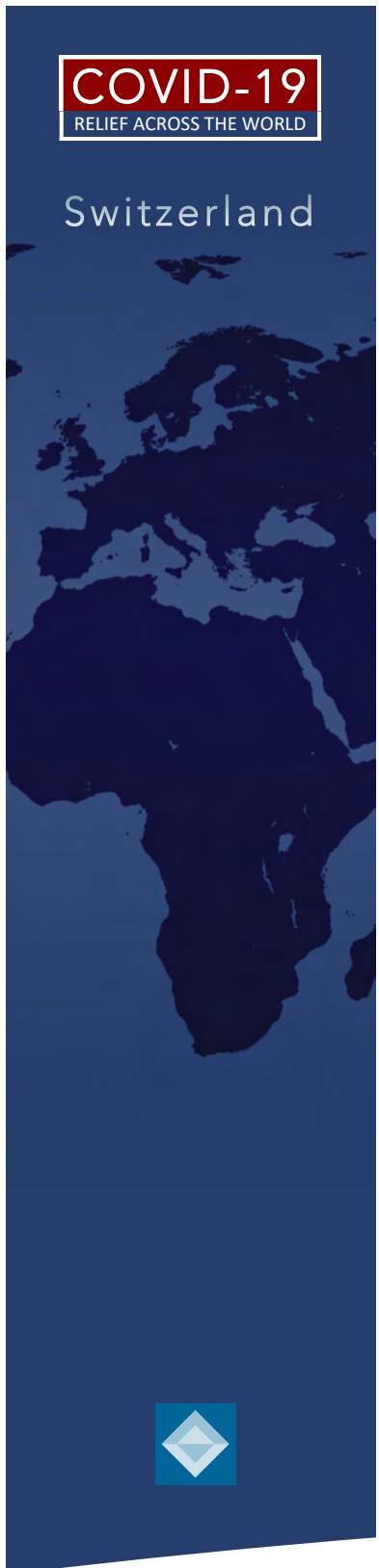
- Visit [www.easygov.swiss/easygov](http://www.easygov.swiss/easygov)
- Download the credit request or use the online form
- Fill in information, sign and dispatch such credit request to a participating bank (via scan or post)
- Evaluation as to completeness of credit request by the bank
- Submission of the credit request to a guarantors' cooperative (*Bürgschaftsgenossenschaft*) by the bank
- Funding of the facility

COVID-19-Credit-Plus (CHF 500,000 to CHF 20,000,000)

- Visit [www.easygov.swiss/easygov](http://www.easygov.swiss/easygov)
- Download the credit request or use the online form
- Fill in information, sign and dispatch such credit request to a participating bank (via scan or post)
- Evaluation as to completeness of credit request by the bank and additional evaluation in accordance with a market standard credit check by the bank
- Submission of the credit request to a guarantors' cooperative (*Bürgschaftsgenossenschaft*) by the bank
- Sign-off by guarantors' cooperative (*Bürgschaftsgenossenschaft*)
- Funding of the facility

### Where can detailed information on COVID-19 bridge loans be found; e.g. forms, etc.?

Details regarding COVID-19 bridge loans including forms can be found under the following link: [covid19.easygov.swiss/](http://covid19.easygov.swiss/)



**Is it possible to apply for more than one COVID-19 bridge loan per company?**

Companies and self-employed persons may only apply for one COVID 19 bridge loan up to CHF 500,000 (ordinary COVID-19- Credit). Any amount in excess requires a separate COVID-19- Credit-Plus request.

**Do the COVID-19 bridge loans have to be repaid? If yes, how long is the repayment period?**

Yes, all COVID-19 bridge loans have to be repaid.

The repayment period is basically 5 years. However, in hardship cases an extension by another 2 years (to a total term of up to 7 years) is possible.

**Are there restrictions (if any) for companies having received COVID-19-bridge loans?**

Yes, in accordance with the respective ordinance (the Solidary Guarantee Ordinance), there are several restrictions on the use of funds; e.g. the prohibition of (i) the distribution of dividends and bonuses and the reimbursement of capital contributions; (ii) the granting of loans or the refinancing of personal and shareholder loans, with the exception of the refinancing of overdrafts incurred since 23 March 2020 with the bank granting the loan guaranteed under this Solidary Guarantee Ordinance; (iii) the repayment of intra-group loans; and (iv.) the transfer of loans secured by a solidary guarantee under the Solidary Guarantee Ordinance to a group company in-/directly affiliated with the applicant which is not domiciled in Switzerland. In other words, the loans are intended to cover immediate liquidity needs. They are not a means to finance the growth or expansion of a company.

**May a company or a self-employed person benefit from assistance offers by both the Swiss Confederation and the different Swiss Cantons?**

Yes, this is possible. COVID-19 Credits and credits guaranteed by cantons supplement each other (the cantonal measures are often in addition to the Federal measures and are subject to the condition that Federal Credits are not sufficient to cover the liquidity needs).

**May companies also obtain bridge loans elsewhere?**

Yes, self-employed persons and small and mid-sized enterprises can also apply for loans at the cantonal level. The canton of Zurich, for instance, has granted a credit guarantee of CHF 425 million, which shall cover 85% of a total of CHF 500 million in bridge loans.

Corresponding loans, that can be obtained from several commercial banks of the canton of Zurich participating in the lending process, are paid out in

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in addition and subsidiary to the COVID-19-Credits guaranteed by the Swiss Confederation as well as other cantonal measures (e.g., short-time working compensation or unemployment benefits).

In addition, various Swiss cantons as well as larger Swiss cities provide a range of additional financial assistance (cf. our Newsletter 13 6 on this subject with reference to the canton of Zurich).

**Can start-up companies also apply for bridge loans?**

As a rule, start-up companies ("start-ups") are also entitled to COVID-19-bridge loans guaranteed by the Swiss Confederation, provided they were founded before 1 March 2020. The amount of such bridge loan, however, is limited to 10% of sales revenues from the 2019 financial year if the start-up already has annual financial statements. In the event the company started its business operations on or after 1 January 2020, or in case of an extended financial year due to its incorporation in 2019, the turnover shall be deemed to be 3 times the net wage of a financial year, up to a maximum of CHF 500,000. Accordingly, access to COVID-19-Credits for start-up companies is limited.

Start-up companies may, however, apply for bridge loans at cantonal level (cf. question 13). In the canton of Zurich in particular, the granting of bridge loans is focusing on start-ups.

\* This article is based on material that appeared originally on the Walder Wyss Attorneys at Law website.

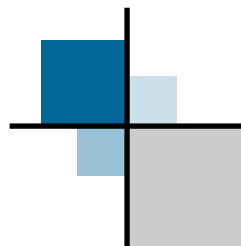
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Original document can be found at:

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## COVID-19 – SWITZERLAND \*

By Aliasghar Kanani and Thierry Boitelle

*Bonnard Lawson (Switzerland)*

Tax and Legal measures and cross-border teleworking  
Update on the current situation

In view of the rapid spread of the COVID-19 worldwide as well as in Switzerland, and the actual or potential impact of the pandemic on economy, the Swiss government felt urged to take certain special measures also in the legal and tax fields.

The present newsletter deals with these urgent legal and tax actions and is divided into two parts giving a brief overview of (1) the measures introduced at the national level in Switzerland (federal and cantonal) in recent days, as well as (2) the tax and social security treatment of income realized by cross-border workers in case of teleworking during the COVID-19 crisis.

### NATIONAL MEASURES A. FISCAL MEASURES

Like other countries, Switzerland is taking fiscal measures to help absorbing some of the economic difficulties that the current crisis is causing to the Swiss taxpayers.

#### At the federal level

- **V.A.T. and other indirect taxes:**

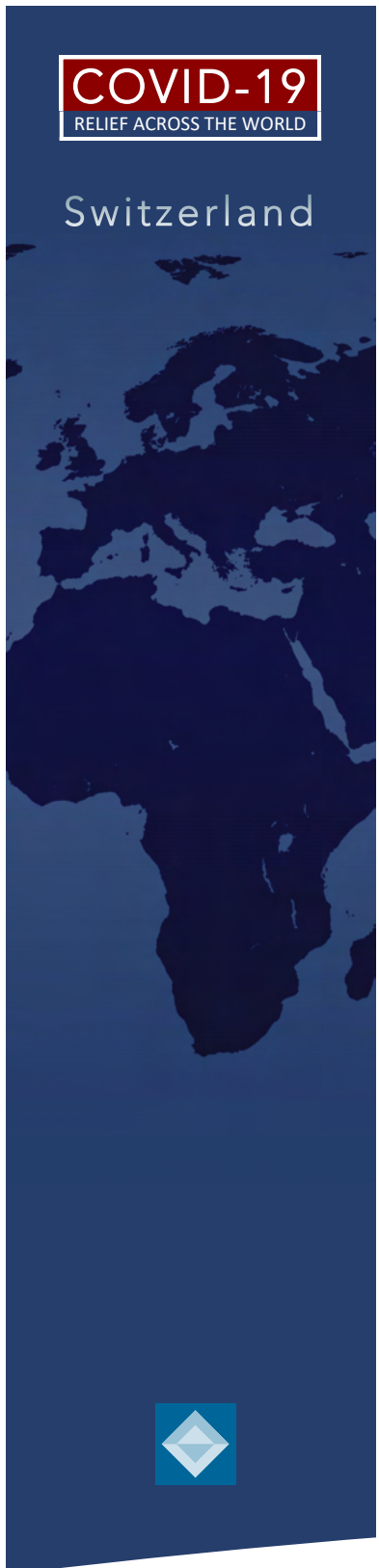
Legal entities will be able to postpone payment deadlines without late payment interest. The interest rate will be reduced to 0.0% for V.A.T., certain customs duties, special consumption taxes and incentive taxes between 20 March and 31 December 2020.

- **Direct federal tax:**

The same regulations as described above apply to direct federal tax from 1 March to 31 December 2020.

In addition, the Swiss Federal Administration has instructed its administrative units to check and settle creditors' invoices as quickly as possible, without waiting for the payment deadlines to expire, in order to increase the liquidity of the Confederation's suppliers.

#### At the cantonal level (some examples):



### *Zurich*

The canton of Zurich was one of the first to announce, on 20 March 2020, certain tax measures as part of its "Corona package", in particular:

- Extension of the deadline for filing tax returns until 31 May 2020 for all individual taxpayers. The extension of the deadline is particularly useful as many municipal administrations in Zurich, as well as in other cantons, have closed their counters in the meantime and only provide information by telephone and e-mail.
- Amendment (upon request) of advance tax payments for companies expecting to incur losses due to the negative effects of the virus, or by individuals experiencing a loss of income.
- Deferred payment of taxes: individuals and companies who are currently unable to pay their most recent tax bills due to the consequences of the virus have the option of deferring payment or paying by instalments.
- Relief from late payment interest: an exemption from interest on arrears would in principle be granted for the period from 1 March 2020 to 31 December 2020. For the time being, this exemption has not yet been communicated by the Canton of Zurich.

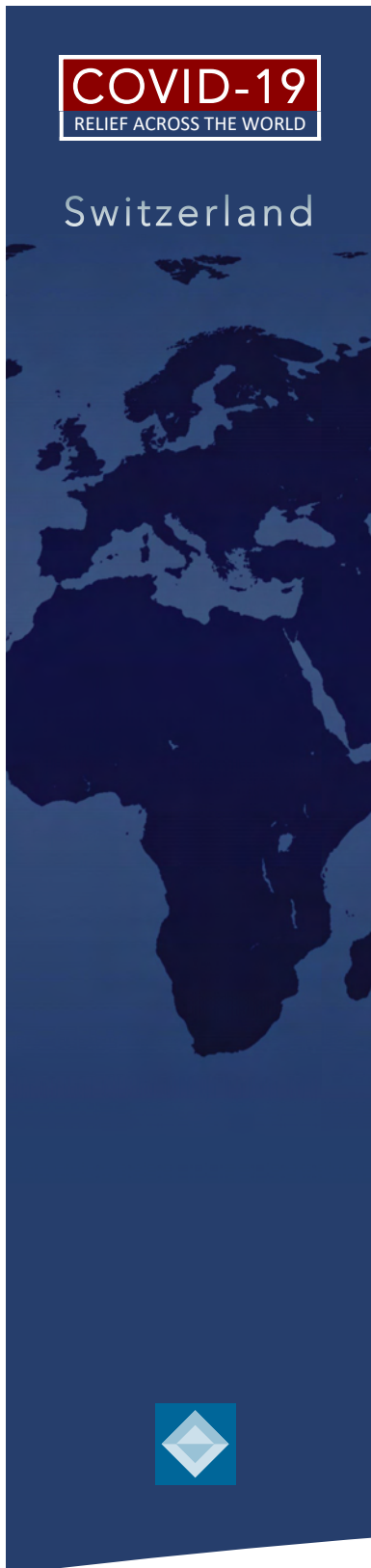
### *Geneva*

On 23 March 2020, the Geneva State Council announced a series of tax measures intended to alleviate the consequences of COVID-19. Its main action is the abolition, from 24 March to 31 December 2020, of all interest in favor of the State for all periodic taxes, whether for individuals or legal entities, a measure which will cost the Canton an estimated 64 million Swiss francs.

An extended deadline may also be granted by the Geneva tax administration ("G.T.A.") for the payment of the 2019 cantonal and communal taxes, which may be made in a maximum of eight monthly instalments and which deadline must be requested within 30 days of the date of notification of the tax assessment.

It will also be possible to modify or postpone the 2020 tax instalments for taxpayers whose income or turnover is falling. Those who postpone the payment of advance payments will not receive a reminder, and late payment interest on 2020 advance payments is waived.

Finally, a general extended deadline of 31 May 2020 for filing tax returns has been granted, as well as for applications for the revision of the tax at source, including applications for the quasi-resident status. The deadline for responding to information requests from the G.T.A. is also extended to 31 May 2020. The publication of payment slips and decisions on claims for cantonal and communal tax and direct federal tax for individuals and legal entities, and those taxed at source, are postponed to 30 April 2020.



In addition, the G.T.A. will work together with the Foundation for Business Support with the aim of offering facilitated payment arrangements to companies.

#### *Vaud*

On 18 March 2020, the Council of State of the Canton of Vaud announced an initial measure to ease the burden on individuals and legal entities, namely the possibility of requesting an amendment to their tax instalments for the year 2020 from that date. Consequently, a self-employed person who anticipates, for example, reduced earnings for the year 2020 can request a change in his or her tax instalments to a lower level than was anticipated at the beginning of the year.

#### *Valais*

The general deadline for filing the 2019 personal tax return and the deadline for requesting revisions to the tax at source are extended from 31 March to 31 May 2020, without the need for a request from the taxpayer. Moreover, the Cantonal Tax Service encourages taxpayers to file their tax return via internet.

In addition, the State of Valais is asking to avoid going to the counters of the cantonal administration and instead to make use of online services, telephone or e-mail. In principle, non-priority services rendered by the Valais tax administration could be suspended and postponed depending on the evolution of the situation.

## LEGAL AND ADMINISTRATIVE MEASURES

### **Standstill of deadlines for debt collection proceedings under the Swiss Federal Debt Enforcement and Bankruptcy Act:**

On 18 March 2020, the Swiss Federal Council decided that debtors cannot be prosecuted throughout Switzerland from 19 March to 4 April 2020 inclusive. During this period, it will not be possible to notify debtors of acts of debt collection.

In concrete terms, this freezing of deadlines means that the debt collection offices and courts will not take any measures to collect debts in accordance with the Federal Debt Enforcement and Bankruptcy Act; in particular, they will not serve any payment orders on debtors or declare a company bankrupt. However, it is still possible, among other things, to take freezing measures against debtors.

Although the suspension of deadlines applies to all Swiss companies, it does not release them from their obligation to pay overdue invoices and from their board of directors' obligation to notify the judge in the event of over indebtedness. In addition, creditors can still initiate collection



proceedings against their debtors, but enforcement measures will be suspended.

#### Extension of judicial vacations in civil and administrative matters:

On 20 March 2020, the Swiss Federal Council decided to bring forward the Easter judicial vacations in civil and administrative matters and to start them the day after the announcement.

Thus, the court holidays will last from 21 March 2020 to 19 April 2020 inclusive.

This measure concerns the cantonal and federal courts and does not apply to proceedings which, under current law, do not normally benefit from judicial vacations, i.e. urgent cases and criminal proceedings. In the case of these procedures, extensions must continue to be required. However, requests for extensions can now also be made by eFax, without being duplicated by sending a paper letter. Replies will be communicated to all parties, if possible, through the same channel as the one used for the request.

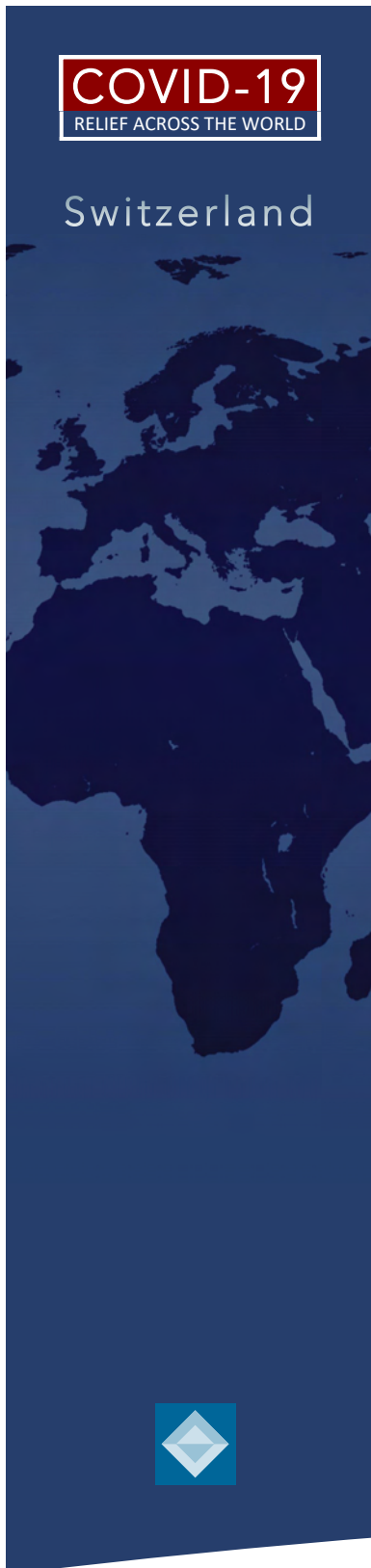
In order to ensure the smooth functioning of the judicial system in times of crisis, the Federal Council has renounced (i) to postpone all hearings and (ii) to no longer to notify judgements or decisions of the authorities. Nevertheless, the courts retain a certain flexibility in their functioning. In particular, they have the possibility of cancelling or postponing non-urgent hearings, extending or restoring certain deadlines.

#### Other measures to support the economy:

- Employers may apply for deferral of payment of **social security contributions**, without negative interest from the time the deferral is granted. They will also be able to adjust the usual amount of advance payments for these contributions in the event of a significant reduction in the wage bill. These measures also apply to self-employed persons whose turnover has fallen.
- Specific **transitional credits** have been introduced (total volume CHF 20 billion) aimed at providing Swiss S.M.E.s with transitional bank credits. The following two types of bridge loans are envisaged:
- Loans up to CHF 500,000: the credit is disbursed immediately without review by the banks. The Confederation guarantees the bank 100% of the default risk. According to the Federal Council, these loans should cover more than 90% of the companies affected by COVID-19;
- Loans from CHF 500,000 to 20 million: these loans will be 85% guaranteed by the Confederation. In the spirit of shared responsibility, a brief credit assessment by the bank is required
- An emergency ordinance has already been drafted in this sense and was released this Wednesday 25 March 2020, and entered into force

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## Switzerland



on Thursday 26 March 2020. According to the Ordinance, the collection of default interest on tax claims of natural and legal persons shall be waived if the tax claim has fallen due in the period between 1 March 2020 and 31 December 2020 (this will not include fines and fees). The waiver of negative interest is limited to 31 December 2020. This temporary waiver shall apply both to tax claims in the tax period 2020 and to tax claims relating to earlier tax periods, provided that the due date for provisional or definitive taxation is in the period between 1 March and 31 December 2020.

- In addition, the Swiss Tax Authorities should grant payment facilities. Thus, if the payment, within the prescribed period of the tax, interests and costs as well as the fine subsequently imposed for a contravention would have very harsh financial consequences for the debtor, the collecting authority may extend the period of payment or authorize payment by instalments.
- **Extension of short-time working** (reduction of working hours) and simplification of procedures.
- **Compensation for loss of earnings for self-employed persons** in the following cases:
  - Closure of schools.
  - Quarantine ordered by a doctor.
  - Closure of an independently managed establishment open to the public.

Compensation is paid on the basis of the earnings loss allowance scheme and is paid in the form of daily allowances. These correspond to 80% of salary and are capped at CHF 196 per day.

- **Earnings loss allowances for employees** : Parents of children up to the age of 12 and other persons who have to interrupt their gainful activity because the care of their children is no longer possible by third parties or persons who have been quarantined are entitled to loss of earnings allowances if they (i) are employees and (ii) are compulsorily insured with the AHV.

### INTERNATIONAL TAX MEASURES: SITUATION OF CROSS-BORDER TELEWORKERS

Switzerland and France, as well as Germany, have recently decided on a pragmatic approach in view of the circumstances of COVID-19. We focus in particular on the cross-border workers living in France and working in the canton of Geneva. It is important to raise this issue because the canton of Geneva counts approximately 85,000 French resident border workers.

Tax issue



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As a reminder, a cross-border worker is an employee who resides in one State and carries out his professional activity in another State, and who returns to his domicile, in principle every day. The imposing of containment due to COVID-19 disrupts the situation of a cross-border worker, who can no longer carry out his activity on Swiss territory, and who must, in many cases, telework from his domicile.

However, Article 17 of the Double Tax Treaty concluded between France and Switzerland provides as a general rule that income received in respect of employment may be taxed in the State of residence unless the employment is exercised in another State.

In accordance with the double tax treaty, the income of a cross-border worker living in France and physically exercising his activity in Switzerland must be taxed in Switzerland. On the contrary, if a cross-border worker carries out his activity at his place of domicile in France, his income should be taxed in France. Therefore, according to the double tax treaty, when a cross-border worker teleworks from his country of residence, the days of teleworking should be taxed in the country of residence.

However, considering the exceptional situation caused by COVID-19, the French Ministry of Europe and Foreign Affairs published on 19 March 2020 a *communiqué* on the situation of cross-border teleworkers. The Ministry states that allowing cross-border workers to telework at their domicile will not have any consequences on the tax regime applicable to them in this situation of emergency. As a result, France renounces to its right to tax the teleworking days of its cross-border worker during the period of containment due to COVID-19. In other words, a French resident cross-border teleworker continues to be subject to the Swiss tax regime.

### Social Security issue

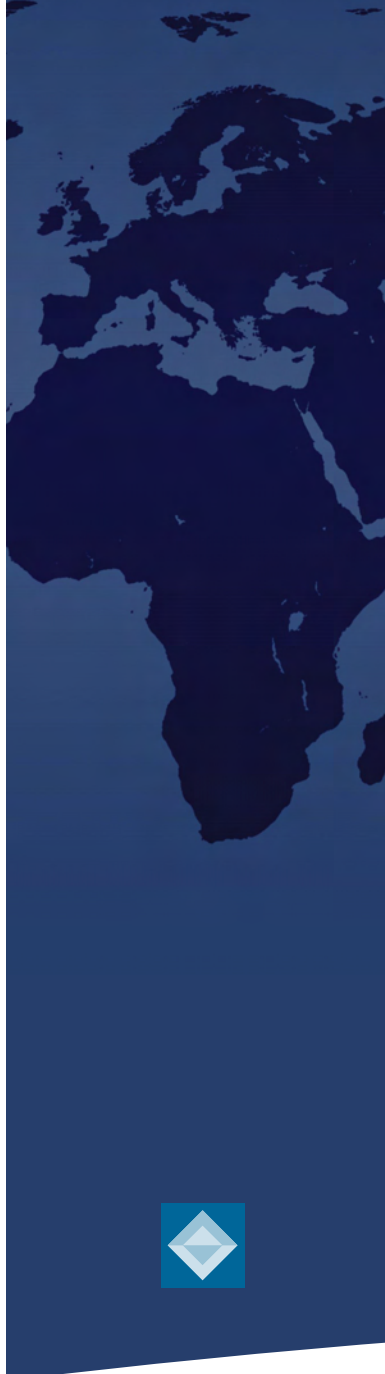
According to E.U. Regulation No. 883/2004 on the coordination of social security systems between the European Community and Switzerland, when a substantial part of the professional activity (exceeding 25%) is carried out in the country of residence, the social security applicable will be that of the country of residence.

In periods of teleworking, cross-border workers residing in France and their Swiss resident employers would have to be careful not to exceed more than 25% of their working time in France, otherwise they would become subject to French instead of Swiss social security.

Nevertheless, the French Ministry of Europe and Foreign Affairs declared on 19 March 2020 that, given the exceptional circumstances related to COVID-19, the increase in time spent on French territory due to the increased use of teleworking (usually limited to 25%) will have no impact on the social security coverage: a cross-border worker will therefore still benefit from a social security coverage in his State of activity.

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Consequently, in view of the exceptional circumstances of COVID-19, France renounces to subject cross-border teleworkers to French social security.

In our view, these derogations from international treaties are pragmatic solutions allowing the cross-border teleworkers to avoid switching tax and social security regimes in this exceptional period.

However, we note that the *communiqué* doesn't mention the case when the activity carried out in France by a cross-border teleworker could lead to the employer-company setting up a permanent establishment in France in accordance with the Article 5 para. 4 of the Double Tax Treaty concluded between France and Switzerland, which could lead to the taxation by the French tax Administration of the profits arising from the employee's activity carried out in France, even though the company is in Switzerland. Considering the exceptional situation, we expect that a derogation from the Double Tax Treaty should also be decided in such cases.

Given the rapid tax and legal changes occurring at the national as well as international levels, it is important to follow them carefully and keep up to date. Our tax team will be glad to assist you if you have any specific questions or require any assistance with regard to your fiscal or patrimonial situation.

Geneva, 26 March 2020

\* This article is based on material that appeared originally on the Bonnard Lawson website.

**The contributions of the following persons are acknowledged:**

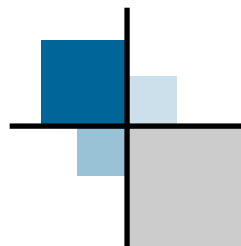
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Original document can be found at:

[bonnard-lawson.com/covid-19-switzerland/](http://bonnard-lawson.com/covid-19-switzerland/)



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## COVID-19 – UNITED KINGDOM

By Kevin Offer and Ian Bowie

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The U.K. Government has announced a number of measures to assist with the financial impact of COVID-19 on both businesses and individuals and continues to make announcements on an almost daily basis. This means details have still to be finalised in some cases.

### JOB RETENTION SCHEME

Under the Coronavirus Job Retention Scheme, all U.K. employers are able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis.

- H.M.R.C. will reimburse 80% of 'furloughed workers' wage costs, up to a cap of £2,500 per month. Employer's National Insurance and minimum automatic enrolment employer pension contributions can also be claimed.
- The employer has the choice paying the remaining 20% shortfall and excess wages over £30,000.
- All U.K. businesses are eligible.
- To qualify, the employee must not undertake any work for the business.
- If the worker has a second employment, then each employment can be furloughed separately.
- The scheme will be backdated to 1 March and can include any employees who were in employment on 19 March 2020.

Employment contracts should be reviewed, and legal guidance sought in respect of a change in an employee's status from fully employed to furloughed. Employee approval will be required where there is a change of employment terms. The grant will be taxable on the employer and does not change the tax position on payments to the employee.

The scheme was recently extended and, at the time of writing, will run until 30 June 2020.

To access the scheme, employers must designate employees as furloughed workers, notify the employee and submit this information to H.M.R.C. on a new online portal that opened on 20 April 2020. The full details of the scheme have not been finalised. Some questions remain unanswered and some problems have been encountered with online applications in certain circumstances. Nonetheless, the majority of companies can apply online with little problem and the tax authorities are generally recognized as having done a good job in a short period of time.



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H.M.R.C. are working urgently to set up a system for reimbursement.

More information is available at [gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme](https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme)

## SELF-ASSESSMENT JULY PAYMENTS ON ACCOUNT DEFERRAL SCHEME

July 2020 payments on account have been deferred until 31 January 2021. H.M.R.C. have confirmed this applies to all taxpayers, not just the self-employed as initially announced. This is not a tax saving. It is simply a deferment of the liability for six months. The July 2020 payment on account is an advance payment of tax due for income between 6 April 2019 and 5 April 2020. Businesses may still wish to make July payment on account to avoid spending money put aside to cover tax liabilities on income received.

There is no need to advise H.M.R.C. that July P.O.A.s are not being made.

## V.A.T. PAYMENT DEFERRAL SCHEME

V.A.T. liabilities between 20 March 2020 and 30 June 2020 may be deferred up until 5 April 2021. This is available to all U.K. businesses and effectively covers the V.A.T. returns for the quarters ending in February, March and April. Again, this is not a tax saving. It is simply a deferment of any V.A.T. liability between 20 March 2020 and 30 June 2020 until 5 April 2021, at the latest. Again, businesses may wish to make V.A.T. payments where possible so as to avoid spending funds put aside to cover V.A.T. liabilities that exist. Whilst it has not yet been made clear, it likely does not change the filing date of the V.A.T. returns which still need to be submitted by the normal deadlines.

There is no need to advise H.M.R.C. that V.A.T. liabilities during this time are not being made. Refunds will be processed by H.M.R.C. as normal.

## PAYE DEFERRAL SCHEME

All U.K. businesses unable to meet PAYE liabilities can receive support through H.M.R.C.'s Time to Pay service. Again, this is not a tax saving. It is only a deferment scheme. Arrangements will need to be agreed with H.M.R.C. on a case by case business. Businesses with uncertain cash flow that wish to use this scheme should apply as soon as possible by calling H.M.R.C.'s dedicated line, 0800 0159 559.

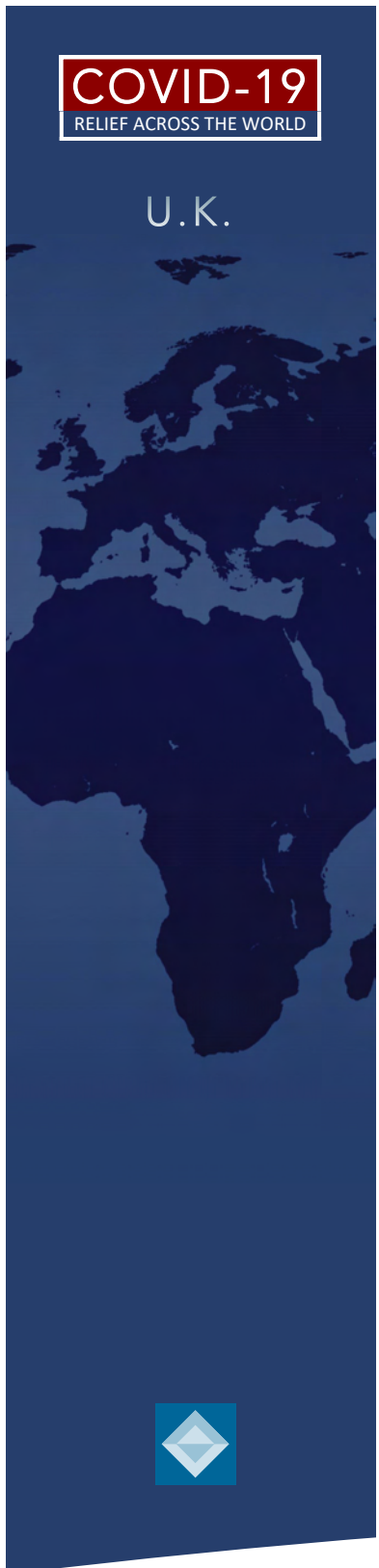
## BUSINESS RATES SUPPORT SCHEME

A business rates holiday for 2019/2020 is currently available to all retail, hospitality, and leisure businesses in England. Cash grants are available for businesses in the same sectors with a rateable value up to £51k. There is no



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procedure to claim the grant or for the business rates holiday. The local authority will contact eligible premises about the business rate holiday and the grants. Consequently, the local authority will not collect the 2020/21 business rates.

## SICK PAY SUPPORT

Small and medium sized businesses (under 250 employees at the end of February 2020) in the U.K. will be able to reclaim two weeks of statutory sick pay for each eligible employee who has been off work because of COVID-19. Employers should maintain records of staff absences and payments of statutory sick pay, but no doctor's note is required in support of the reclamation. The repayment mechanism still to be decided by the Government.

## BUSINESS INTERRUPTION LOAN SCHEME

Loans of up to £5m are available to all U.K. businesses with turnover of less than £45 million per annum, although other British Business Bank eligibility criteria will apply. The scheme will be delivered through commercial lenders, backed by the government-owned British Business Bank. Applications should be made via the bank regularly used by the business or one of the other accredited lenders which are detailed at [www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils/accredited-lenders/](http://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils/accredited-lenders/).

The Government will guarantee up to 80% of each loan and will also cover the first 12 months of interest payments. There are calls for this guarantee to be increased to 100% for small businesses borrowing no more than £25,000 but this amendment has yet to be confirmed.

## LARGE BUSINESS INTERRUPTION LOAN SCHEME

Loans of up to £25 million to all U.K. businesses with turnover of £45 million to £250 million per annum and of up to £50 million for businesses with turnover above £250 million have now been introduced, although other British Business Bank eligibility criteria will apply. The scheme will be delivered through commercial lenders, backed by the government-owned British Business Bank. The Government will guarantee up to 80% of each loan but will not cover the first 12 months of interest payments for these larger loans.

Applications should be made via the bank regularly used by the business or one of the other accredited lenders which are detailed at [www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/clbils/current-accredited-lenders-and-partners-2/](http://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/clbils/current-accredited-lenders-and-partners-2/)

## SELF-EMPLOYED INCOME SUPPORT SCHEME



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Self-employed individuals will get monthly payments for three months based on 80% of average earnings over past three years, capped at £2,500 per month. Those who first began a self-employed business in the three-year period ending 5 April 2019 will be averaged over the tax returns already filed showing self-employment income.

The following conditions must be met in order to qualify for benefits under the scheme:

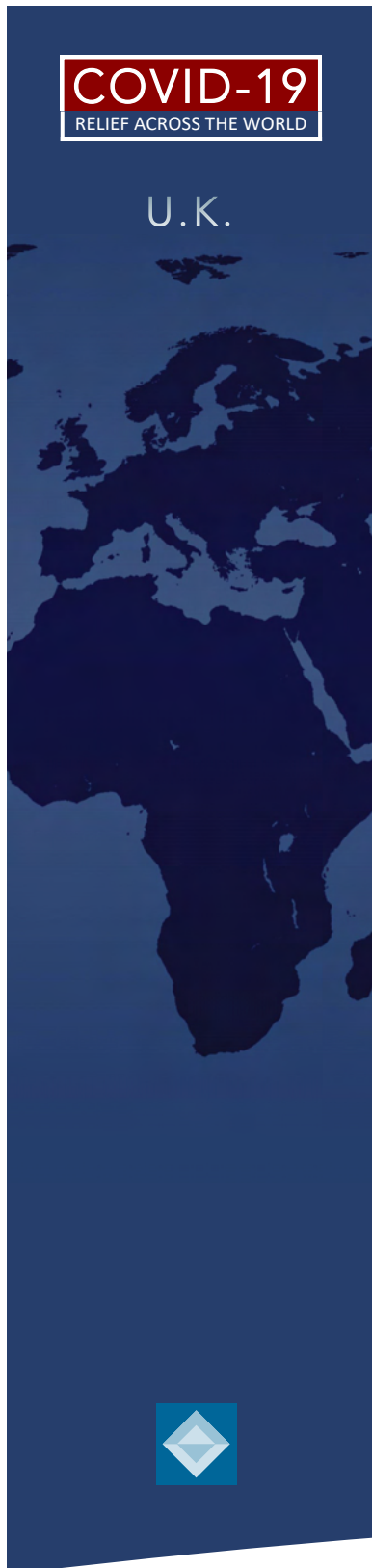
- Profits must meet one of two income limits:
  - They must be under £50k in 2018/19 or make up at least half of the individual's total income for the tax year or
  - They must be under £150k in the three-year period ending 5 April 2019 (or average under £50k per year if not self-employed for three years) and make up at least half of the individual's income during that period.
- Anyone who has not filed a 2018/19 tax return has been granted four weeks to do so in order to access the scheme.
- Individuals must have traded in the tax year 2019 to 2020
- Individuals must be trading when the application is filed, or would be except for COVID-19
- Individuals must be intending to continue to trade in the tax year 2020 to 2021
- Individuals must carry on a self-employed or partnership business in 2019/2020 that has been adversely affected by COVID-19 in any of the following ways:
  - The individual is unable to work because of (i) shielding, (ii) self-isolating, (iii) sick leave because of coronavirus, or (iv) caring responsibilities for others because of coronavirus or
  - The individual had to scale down or temporarily stop trading because of (i) supply chain interruptions, (ii) a drop in business because fewer or no customers or clients, or (iii) staff that is unable to come in to work.

H.M.R.C. will contact those who may qualify and invite them to apply. Support will be based on tax records held by H.M.R.C. Grants will be paid in one lump sum covering three months from 1 March to 31 May. Any grant received under this scheme will be taxed as income of the business.

It is expected that persons will be contacted in May with the payments to start to be paid in June. Individuals who need cash earlier can apply for the loan help or Universal Credit. Individuals who started self-employment in the current tax year will not qualify for the scheme. The current advice is to look at other help available such as loans or Universal Credit.

Individuals who operate through a company and take income in the form of a salary plus dividends will not qualify for this scheme. They may be able to





access the Job Retention Scheme referred to above in respect of their salary payment.

Additional information on the Self-Employed Income Support Scheme appears at [gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme](https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme)

## STATUTORY SICK PAY FOR SELF-EMPLOYED

Statutory Sick Pay will be available for self-employed individuals staying at home on Government advice. This will apply from 13 March 2020. Application can be made via the contributory Employment and Support Allowance (ESA).

Application can also be made for Universal Credit but eligibility will depend on several factors including savings levels & partners' income. Applying can be complex and there are other eligibility criteria so submitting application as early as possible is recommended. Details on how to apply appear at [gov.uk/guidance/new-style-employment-and-support-allowance](https://www.gov.uk/guidance/new-style-employment-and-support-allowance) and [understandinguniversalcredit.gov.uk/coronavirus/](https://www.understandinguniversalcredit.gov.uk/coronavirus/)

## OTHER MEASURES

Other measures to assist businesses include:

- Extended time limits for filing statutory accounts.
- Extended periods for payment of import duties.
- Some relaxation in the Statutory Residence Test for those who have to remain in the U.K. due to the coronavirus and for skilled workers who come to the U.K. to help tackle the pandemic.

## FURTHER INFORMATION

Further information can be found in the following Government links:

[COVID-19: support for businesses](#)

[COVID-19: guidance for employees](#)

This is a constantly moving situation so up to date advice is important.



Argentina



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# SOUTH AMERICA

## AMENDMENTS TO THE TAXATION REGIME IN ARGENTINA AS A CONSEQUENCE OF COVID-19 \*

By Javier Canosa  
*Canosa Abogados (Argentina)*

The Argentine Republic does not have a revenue code. The different categories of taxes are regulated by separate laws. The Argentine Tax Authorities ("A.F.I.P.") are responsible for the collection and administration of national taxes and depend directly from the Ministry of Economy. Taxes in Argentina are levied at federal, provincial and municipal level. According to the World Bank, Argentina has the second highest tax burden in the world, up to 106% of the commercial profits<sup>1</sup>.

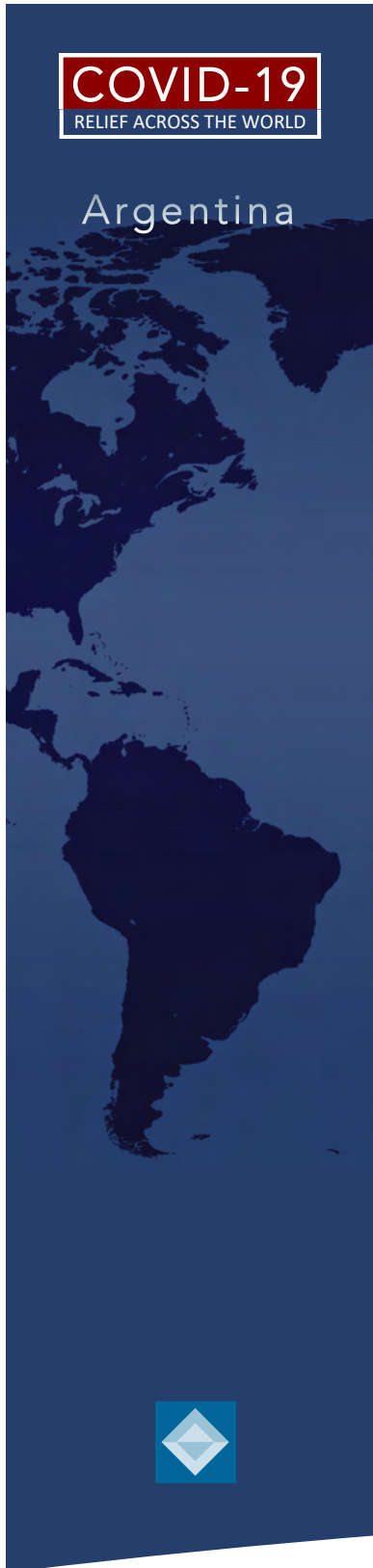
At the federal level, the most relevant taxes are income tax, V.A.T., and tax on dividends.

At the provincial level, the most important taxes are the gross income tax, which is a direct percentage of companies' turnover (with rates that vary by industry and area), stamp taxes, property tax and, in some cases, inheritance tax<sup>2</sup>.

Finally, municipalities charge fees for various services related to industrial safety, public hygiene, and public lighting.

The majority of taxes are self-assessed. This means that a taxpayer must submit affidavits to A.F.I.P. that include income and tax payable according to the rates set by law. The philosophy behind this process is that Argentine taxpayers have all the information required to prepare the declaration and calculation of tax. In current practice, the affidavits are prepared online on the A.F.I.P. website. A.F.I.P. reserves the right to review the affidavits and the amounts paid. If there are no affidavits submitted or these are not accurate, A.F.I.P. will determine the tax payable.

Under the COVID-19 health emergency, A.F.I.P. extended the tax holiday on these payments until 10 May 2020, coinciding with the conclusion of preventive and compulsory social isolation provided by the national



government. During this period, all taxes overseen by A.F.I.P. will not be computed.

A.F.I.P. issued several resolutions and measures related to the COVID-19 emergency, among the most important are:

#### **General Resolution ("G.R.") A.F.I.P. 4686/2020 SIRADIG**

Under local law, employees must file a form (Form 572 Web) in order to determine income tax payable by the employees in regard to salaries. This resolution deferred the filing of Form 572 Web for the purpose of workers reporting the amounts to be deducted from income tax for the period 2019 until 30 April 2020. Prior to the resolution, the final due date for filing was 31 March 2020).

#### **General Resolution A.F.I.P. 4685/2020**

In the Argentine tax system, most of the proceedings with tax authorities are submitted online. However, some may be performed in person at A.F.I.P.'s offices. The resolution makes use of the digital presentations compulsory for all proceedings carried out with A.F.I.P. from 20 March 2020, to 30 June 2020.

#### **General Resolution A.F.I.P. 4684/2020**

A.F.I.P. is entitled to apply interim measures for breaches of applicable rules. This resolution suspended the application of the interim measures in connection with corporations that qualify as micro, small and medium companies until 30 April 2020.

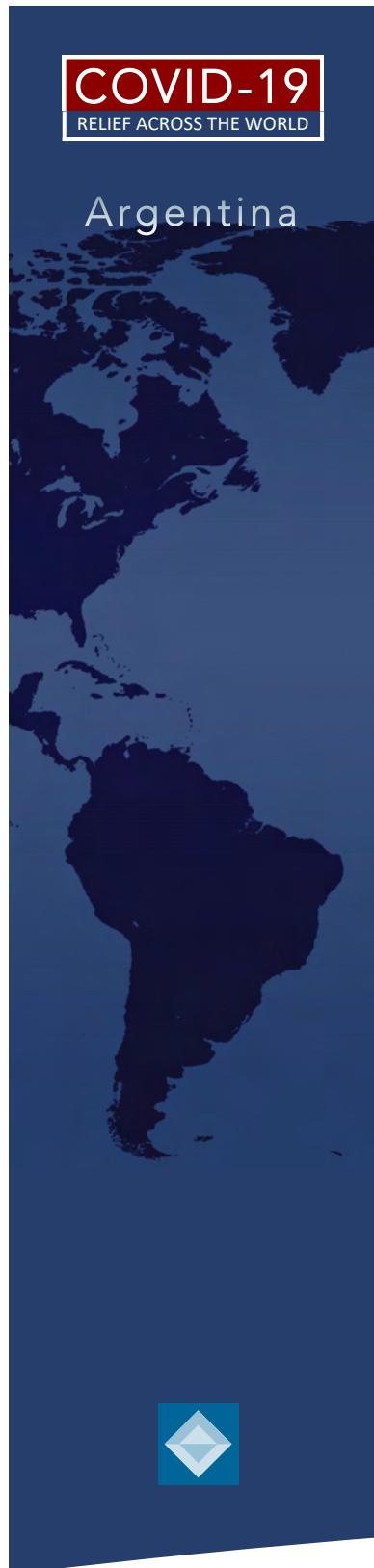
#### **General Resolution A.F.I.P. 4683/2020**

Prior to the COVID-19 outbreak, A.F.I.P. issued regulations providing for a special transitory regime applicable to payment of tax debts, including instalments, interest rates, and payment plans. These were available for taxpayers until 31 March 2020. The resolution extends the availability of such special regime for taxpayers until 30 June 2020.

#### **Decree 300/2020**

This decree provides for a 95% reduction in employer contributions in relation to employers belonging to health-related services, establishments and institutions for a period of 90 days as from 20 March 2020. Rate of 2.50/1000 for credits and debits in current account in the case of employers corresponding to establishments and institutions related to health for a period of 90 days from 20 March 2020.

#### **Decree 332/2020**



This decree establishes various measures designed to assist businesses. Included are:

- The postponement or reduction of up to 95% of the of employer contributions to the Argentine Integrated Social Security System.
- The adoption of a salary-continuation compensation arrangement calling for payments to companies employing up to 100 workers in the private sector.
- The adoption of REPRO Assistance for the Health Emergency. This is a non-contributory sum paid by the State to assist workers in the private sector. It applies to companies with up to 100 workers

#### Decree 333/2020

This decree sets a 0% export duty rate in order to secure the access to certain essential products. Some products included in the list are certain varieties of ethyl alcohol, antiseptics, lab or pharmacy articles, surgical gloves, face masks, thermometers etc. At the same time, the Tax Authorities exempted these articles from the imports value added tax regime.

#### General Resolution 4689/2020

This resolution defers the submission of annual affidavits of compliance with transfer prices rules for international operations carried on in fiscal years ended between 31 December 2018 and 30 September 2019. Affidavits may be submitted between 18 and 22 May 2020.

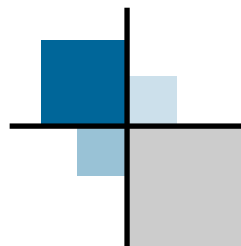
<sup>1</sup> <https://data.worldbank.org/indicator/IC.TAX.TOTL.CP.ZS?view=chart>

<sup>2</sup> Only the Province of Buenos Aires and the Province of Entre Ríos impose inheritance taxes.

\* This article is based on material that appeared originally on the Canosa Abogados website.

Original document can be found at:

[canosa.com/app/uploads/2020/03/State-of-Emergency-Measures-COVID-19-Canosa-Abogados.pdf](https://canosa.com/app/uploads/2020/03/State-of-Emergency-Measures-COVID-19-Canosa-Abogados.pdf)



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## TAX AND CUSTOMS EXTRAORDINARY MEASURES IN BRAZIL - #2 \*

By Celso Grisi, Gonçalo Falcão, Paulo Rage and Ivan Tauil

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As a result of the impacts caused by the COVID-19 pandemic, extraordinary measures are beginning to be taken by Federal, State and Municipal governments in relation to tax collection, compliance with ancillary tax obligations, and customs procedures simplification.

Among the measures recently adopted, we highlight the following:

### UNIÃO FEDERAL

#### Provisional Measure No. 927/2020

Suspends payment of contributions to the Unemployment Guarantee Fund (F.G.T.S.) related to March, April and May 2020. These payments can be made without fines or other penalties over six or fewer installments through July 2020.

The Provisional Measure also authorizes the extension of validity for 180 days with regard to tax clearance certificates issued jointly by the Federal Revenue Office and National Treasury Attorney's Office in case of public disasters, pending enactment of a regulatory act by both agencies.

#### Decree No. 10,285/2020

Reduces to zero the tax rate on manufactured products ("I.P.I.") levied on medical and hospital products listed in the document attached to the decree and provides that rates will be reestablished on 1 October 2020.

#### SECEX Ordinance No. 16/2020 and SUEXT Export Notice No. 08/2020

Creates a Special Export License for Products to Combat COVID-19, which must be presented for the export of products listed in the SUEXT Export Notice n° 08/2020.

## Brazil

### STATE

#### *Alagoas*

#### **SEF Normative Instruction No. 10/2020 and SEF Notice No. 01/2020**

Extends for 90 days the deadlines related to (i) administrative tax proceedings such as challenges and appeals to assessments, (ii) compliance with ancillary tax obligations which demand personal appearances, and (iii) delivery of E.F.D., GIA-ST and DeSTDA.

I.C.M.S. taxpayers are still required to present tax certificates at state border tax control stations in interstate commerce of goods or merchandise destined for a person or legal entity located in Alagoas. With the exception of tax law infractions, fines and legal fees will not be charged at the internal border tax control stations.

In addition, I.C.M.S. taxpayers enrolled in the simplified taxation system ("Simples Nacional"), have a three-month extension to pay amounts due related to the months of March, April and May 2020.

#### *Espírito Santo*

#### **Decree No. 4,603-R/2020**

Extends the deadline to file the State tax return E.F.D.s I.C.M.S./I.P.I. related to February 2020 and March 2020. The new dates are April 2020 and May 2020, respectively. This decree also provides a 30-day extension for filing challenges and appeals of tax assessment to the State Council of Tax Appeals ("C.E.R.F.") otherwise due between 16 March 2020 and 30 April 2020. Regarding the simplified taxation system (Simples Nacional), the extension applies only to tax assessments or exclusions for which the State Treasury of Espírito Santo must make the final judgement.

#### *Rio de Janeiro*

#### **SSER Ordinance No. 219/2020**

Suspends the deadline for filing challenges and appeals in administrative proceedings for 15 days. In addition it suspends access to paper records in ongoing cases and face-to-face assistance by all offices of the State Treasury.

#### **PGE Resolution No. 4,527/2020**

Extends for 30 days the validity of the tax clearance certificates in connection with tax obligations scheduled for foreclosure that expire as of 17 March 2020.





*São Paulo*

Decree No. 64,879/2020

Suspends for 90 days the acts directed to challenge enrolled debts under the administration of the State Attorney General.

Act TIT No. 02/2020

Suspends trials and the publication of summonses between 23 March 2020 and 30 April 2020. Ongoing deadlines for filing appeals and other petitions in administrative proceeding are not suspended.

## MUNICIPAL

*Macaé*

SEFAZ Resolution No. 09/2020

Suspends for an undetermined period enrollment and other services related to the Municipal Amnesty Program (R.E.F.I.M.).

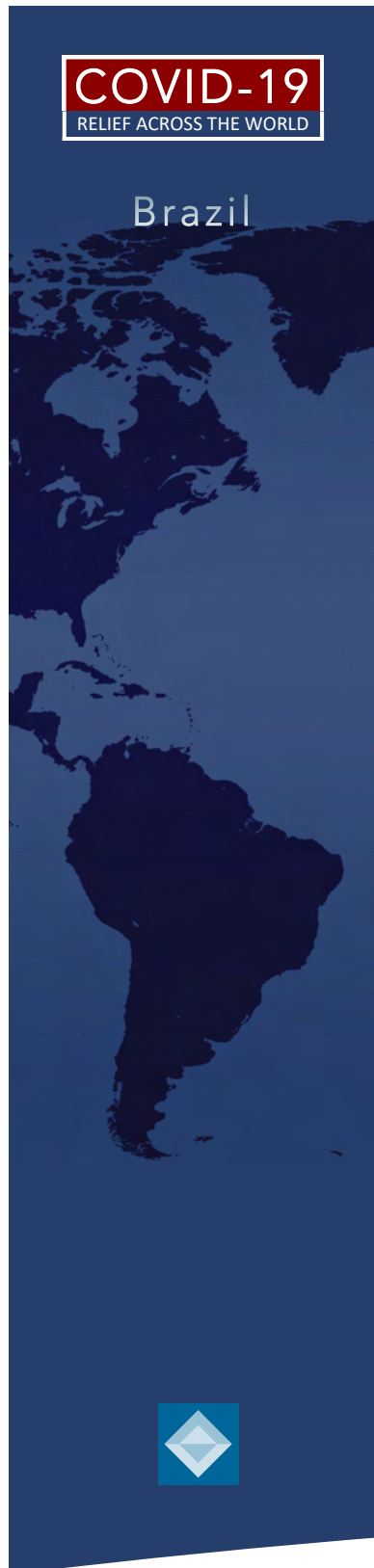
\* This article is based on material that appeared originally on the Tauil & Chequer Advogados in association with Mayer Brown (TCMB) website and Mayer Brown COVID-19 Portal.

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Original document can be found at:

[mayerbrown.com/en/perspectives-events/publications/2020/03/covid-19---medidas-extraordinarias-adotadas-no-ambito-tributario-e-aduaneiro](https://mayerbrown.com/en/perspectives-events/publications/2020/03/covid-19---medidas-extraordinarias-adotadas-no-ambito-tributario-e-aduaneiro)



## Chile



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## CHILE – COVID-19 MEASURES

By Omar Morales

*Montt y Cía. S.A. (Chile)*

On 3 March 2020, Chile confirmed its first case of the disease caused by the COVID-19 virus. As a result, the Government implemented control measures.

### SELF-ISOLATION

- On 18 March 2020, a State of Emergency for 90 days was declared.
- Restrictions on the movement of individuals were imposed with effect on 26 March 2020. These restrictions included a curfew in all the territory from 10.00 PM until 5.00 AM the next day.
- Lock-downs of several area, mostly in the capital of Santiago and other cities where the majority of cases have been detected.
- Nonessential businesses were closed, on-line classes began for students at every educational level, and work-from-home strategies became the norm.

At some point, travel restrictions were imposed, control points called "Sanitary Customs" sprang up at the entry to certain cities or areas within a city. Ultimately "Sanitary Cordons" were established prohibiting the entry to or departure certain areas. Finally, the use of face masks became mandatory in public transportation and places open to the public such as supermarkets and business dealing with the public.

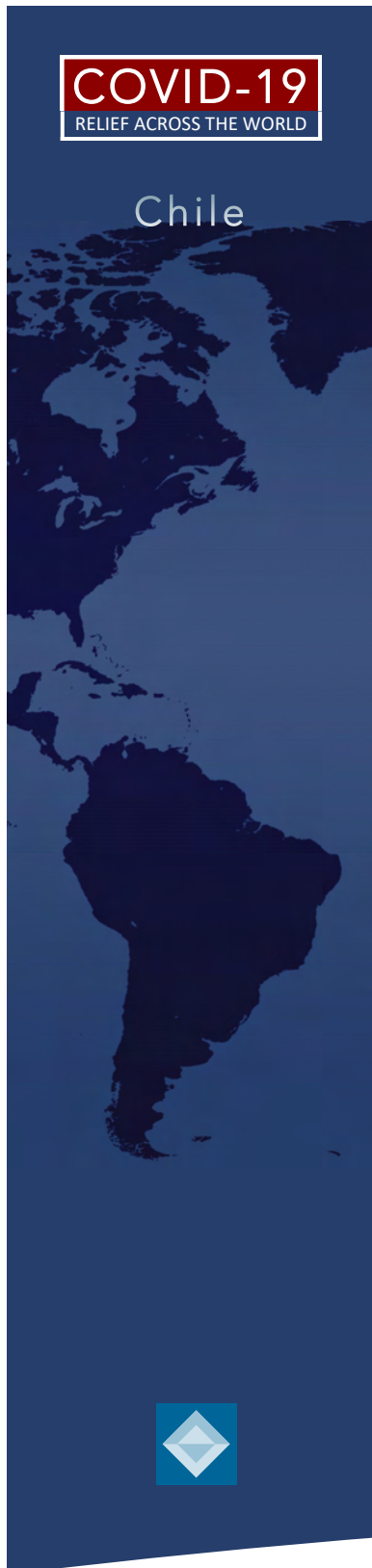
The strategy appears to be working. As of 21 April 2020, there have been 10,507 cases confirmed and a fatality rate around 1.3%. The health system appears to be coping with the crisis.

In recent days, the Government has announced its intention to remove restrictions and to proceed to business almost as usual. Several lockdowns have been lifted and there is a call for the return of the students to classrooms and Government employees to their workplaces. These announcements have triggered warnings from infectious disease experts and the "back to business" strategy is delayed until end of April at the earliest.

### ECONOMIC RELIEF

In order to take care of the adverse economic impact that has been experienced, the Government has promoted several economic measures to protect the economy and employment. These include:





- Allowing the furloughing of employees by agreement of the parties, thereby entitling the furloughed employees to unemployment insurance coverage.
- Prohibiting the dismissal of employees using *force majeure* as a reason based on COVID-19, thereby preventing dismissal without severance payment.
- Interest-free loans to small and medium enterprises that are guaranteed by the Government.
- Aid packages for informal workers and the poorer sectors of society with direct payments and subsidies.

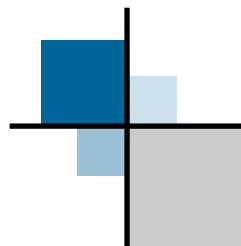
Banks have deferred payment of mortgages for three months on an interest free basis.

In tax matters:

- The stamp tax that affect loans has been deferred from April until September. The stamp tax is imposed at rates that vary from 0.4% to 0.8% on the principal amount of a loan.
- Monthly tax payments and V.A.T. payments have been deferred for three months. The payment will become due in up to 12 interest-free installments beginning from July 2020.
- Income taxes due in April have been deferred until July for small and medium enterprises.
- The payment of the first installment of real estate taxes that are due in April, June, September, and November of each year has been deferred. They will be collected together with the later installments without the imposition of late-payment charges for most taxpayers.

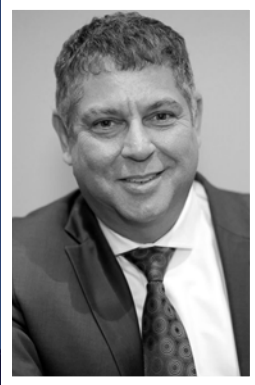
From the administrative processes perspective, the Tax Department has taken a more flexible approach to process on-line taxpayers requests and applications that would normally require a personal visit to the tax offices.

The situation, as happens to be the case everywhere, continues to evolve and constantly change.



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# NORTH AMERICA

## CANADA'S FINANCIAL SUPPORT DURING THE COVID-19 PANDEMIC

By Peter Weissman and Matthew Cho

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The Canadian federal government has announced, in addition to extensions to some filing and payment deadlines, a number of measures to financially help Canadian individuals and businesses survive the economic impact of the COVID-19 pandemic. In addition to the extended filing and payment deadlines noted in the table below several programs were created to support individuals, businesses and specific sectors.

### EXTENSIONS TO FILING DEADLINES

Important changes to Canadian tax-filing and payment deadlines	
Individuals	<p>The Deadline to file income tax and benefit returns has been deferred until 1 June 2020.</p> <p>The deadline to pay any balance due for 2019 has been extended from 30 April 2020 to 1 September 2020. This means individuals will not be assessed any penalties or interest if their balance due is paid by 1 September 2020.</p>
Self-employed individuals and their spouses or common law partner	<p>For self-employed individuals, or those who have spouses or common law partners that are self-employed, the deadline to pay any balance due for your individual income tax and benefit return has been extended from 30 April 2020 to 1 September 2020. The tax return filing deadline remains at 15 June 2020.</p>



Important changes to Canadian tax-filing and payment deadlines	
Corporations	The deadline of businesses to pay any income tax amounts that become owing or due after 18 March 2020 and before 1 September 2020 has been extended to 1 September 2020. This means businesses will not be assessed any penalties or interest if their balance due is paid before 1 September 2020.
Trusts	<p>For trusts with a taxation year end of 31 December 2019, the filing due date of 31 March 2020 was deferred to 1 May 2020.</p> <p>Furthermore, all trusts that have an upcoming income tax balance due date or an income tax instalment payment due date before 1 September 2020, have had their payment due date effectively extended to 1 September 2020.</p> <p>Penalty and interest implications for upcoming trust tax obligations not covered by the relief described above will be considered by the Canada Revenue Agency (the "C.R.A.") on a case-by-case basis.</p>
Charities	For all charities with an annual Registered Charity Information Return due between 18 March 2020 and 31 December 2020, the filing deadline has been extended to 31 December 2020.

## PROGRAMS FOR BUSINESSES

### Limited Wage Subsidy ("L.W.S.")

The government created a limited 10% wage subsidy of up to C\$1,375 per eligible employee and an aggregate maximum of C\$25,000 per employer. Members of an associated group of companies each have their own C\$25,000 limit. This modest amount is not paid in cash. Rather, it is delivered in the form of a reduction in the remittance of employee source deductions required to be paid to the C.R.A.

### The Canada Emergency Wage Subsidy ("C.E.W.S.")

In general, the C.E.W.S. will reimburse eligible employers 75% of the amount of remuneration paid to eligible employees (to a maximum benefit of C\$847 per week) for up to 12 weeks, retroactive to 15 March

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2020 through August 2020<sup>1</sup>. The government can extend the subsidy period up to 31 September 2020.

The C.E.W.S. also provides a 100% refund of certain employer-paid contributions to Employment Insurance, Canada Pension Plan, Québec Pension Plan, and Québec Parental Insurance Plan.

Eligible entities are:

- Corporations that are not public institutions or tax exempt
- Individuals
- Registered charities that are not public institutions
- Most Not-for-Profit entities that are not public institutions
- Partnerships where all of the members are any of the above.

Public bodies such as municipalities, local governments, Crown corporations, wholly owned municipal corporations, public educational institutions and hospitals do not qualify for the C.E.W.S.

If a business is an eligible entity it must determine if it qualifies for the C.E.W.S. A business will qualify if<sup>2</sup>:

- It suffered a decrease in revenue of at least 15% in March 2020 compared to March 2019 (or the average revenue for January and February 2020). To be eligible for April and/or May the revenue decline must be at least 30% when compared to revenue earned in the same period in 2019 (or the average revenue in January and February 2020);
- It had a valid payroll account number with the C.R.A. on 15 March 2020; and
- The individual who has principal responsibility for the financial affairs of the eligible entity attests that the entire application is complete and accurate (e.g., the decline in revenue). The application for the C.E.W.S. is submitted in prescribed form and manner before October 2020.

The table on the following page outlines each claiming period, the month in which a decline in revenue would be required compared to the reference month and the amount revenues must have decreased, in order to qualify for the subsidy.

The first method used is the one that must be used for all subsequent claims. Given that applications can be made up until 30 September 2020,



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	Payroll Period	Required reduction in revenue	Reference periods for revenue comparisons
Period 1	15 March – 11 April	15%	March 2020 over: <ul style="list-style-type: none"> <li>• March 2019 or</li> <li>• Average of January and February 2020</li> </ul>
Period 2	12 April – 9 May	30%	April 2020 over: <ul style="list-style-type: none"> <li>• April 2019 or</li> <li>• Average of January and February 2020</li> </ul> <b>OR</b> Be eligible for Period 1
Period 3	10 May – 6 June	30%	May 2020 over: <ul style="list-style-type: none"> <li>• May 2019 or</li> <li>• Average of January and February 2020</li> </ul> <b>OR</b> Be eligible for Period 2
Period 4 <sup>4</sup>	TBA	TBA	TBA
Period 5 <sup>4</sup>	TBA	TBA	TBA

companies that can weather the storm may want to wait so they can determine what eligibility method is best for them.

To provide greater certainty to employers, once an employer is found eligible for the C.E.W.S. for a specific claiming period, the employer automatically qualifies for following periods.

Employers are able to apply through the C.R.A.'s "My Business Account" portal if they have registered previously for this service or a web-based application. Signing up for direct deposit should expedite the receipt of funds once an application is approved.

If it is determined that an employer did not meet the eligibility requirements, repayment of the amounts received under the program will be required.



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Applicants that engage in artificial transactions to reduce revenue for the purpose of claiming the C.E.W.S. must repay the subsidy and are subject to a civil penalty equal to 25% of the value of the subsidy claimed. In egregious cases, an applicant may face criminal fines of up to 200% of the subsidy and imprisonment of up to five years.

The government discloses each applicant's identity on its website.

The C.E.W.S. is reduced by any amount received under the L.W.S.

### **The Canada Emergency Business Account ("C.E.B.A.")**

This program provides interest-free loans of up to C\$40,000 to small businesses and not-for-profits that had a payroll in 2019 of between C\$20,000 and C\$1,500,000. If 75% of the loan balance is repaid before 31 December 2022, the remaining 25% of the principal will be forgiven.

### **The Canada Emergency Commercial Rent Assistance Program ("C.E.C.R.A.")**

At the time of writing, legislation for this program had not been released. The proposed program will see the Federal and Provincial governments provide owners of commercial real property<sup>5</sup> (incorporated or not) with a forgivable loan of 50% of an eligible small business's rent for April, May and June 2020.

The loan will be forgiven if the commercial property owner enters into a rent reduction agreement with its eligible small business tenants, agreeing to reduce the gross rent payable by at least 75% during the rent reduction period and to not evict the eligible small business tenant while the agreement remains in place.

Eligible small businesses are businesses, including non-profit and charitable organizations, that:

- pay no more than C\$50,000<sup>6</sup> in monthly gross rent per location (as defined by a valid and enforceable lease agreement),
- generate no more than C\$20 million in gross annual revenues, calculated on a consolidated basis (at the ultimate parent level), and
- have temporarily ceased operations (i.e. generating no revenues), or have experienced at least a 70% decline in pre-COVID-19 revenues in the given month, compared to the same period in 2019. Tenants can elect to use the average of their January and February 2020 revenues.

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Landlords must also qualify. To be eligible the property owner must meet the following conditions:

- be the property owner of a commercial real property where the impacted small business tenants are located,
- have entered (or will enter) into a rent reduction agreement for the period of April, May, and June 2020, that will reduce impacted small business tenant's rent by at least 75%,
- ensures the rent reduction agreement includes a moratorium on eviction for the period of April, May and June 2020, and
- declared rental income on its tax return (personal or corporate) for tax years 2018 and/or 2019.

The C.E.C.R.A. in its proposed form has not been passed and is controversial as it is a program to help small businesses but cannot compel their landlords to apply.

**The Business Credit Availability Program (B.C.A.P.)**

The following initiatives are covered by the B.C.A.P.:

- Loan guarantees for small and medium sized businesses (S.M.E.s) for new operating credit and cash flow term-loans up to C\$6.25 million. The funding cap for this program is C\$20 billion.
- A co-lending program for S.M.E.s that offers differing maximum finance amounts based on revenues. These loans will be funded by the Business Development Bank of Canada (80%) and an applicant's financial institution (20%).
- A mid-market financing program has been proposed to provide commercial loans ranging from C\$12.5 million to C\$60 million for S.M.E.s with over C\$100 million in revenue that require more funding than what the B.C.A.P.'s other programs already provide.
- A mid-market guarantee and financing Program for companies who tend to have revenues in between C\$50 million and C\$300 million. The Export Development Corporation of Canada will guarantee 75% of new operating credit and cash-flow loans ranging from C\$16.75 million to C\$80 million.

**The Large Employer Emergency Financing Facility ("L.E.E.F.F.")**

The L.E.E.F.F. will be available to for-profit businesses (other than those in the financial sector) as well as not-for-profit businesses, such as airports, with annual revenues generally in the order of C\$300 million or higher.



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Eligible applicants must be seeking financing of about C\$60 million or more, have significant operations or workforce in Canada, and not be involved in active insolvency proceedings.

### Other Programs for Businesses

Other business programs will fund 100% of the minimum wage for certain summer jobs for students, provide funding for innovative early-stage companies, support and support businesses in Northern Territories as well as small and medium sized indigenous businesses and financial institutions.

## PROGRAMS FOR INDIVIDUALS

### The Canada Emergency Response Benefit ("C.E.R.B.")

The C.E.R.B. provides short term financial assistance to workers who have lost their jobs or who have stopped working because of COVID-19. The C.E.R.B. provides C\$500 per week, for any 16 weeks from 15 March 2020 to 3 October 2020.

The C.E.R.B. is available to workers who:

- Reside in Canada, who are at least 15 years old
- Have:
  - Stopped working because of reasons related to COVID-19, or
  - Are eligible for Employment Insurance regular or sickness benefits, or
  - Have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between 29 December 2019 and 3 October 2020
- Had employment and/or self-employment income of at least C\$5,000 in 2019 or in the 12 months prior to the date of their application; and,
- Voluntarily quit prior to COVID-19.

The C.E.R.B. temporarily replaces any employment insurance ("EI") payments for which an employee is eligible. The EI benefits are not lost and will start where they left off after C.E.R.B. entitlement ends. Individuals must reapply for the C.E.R.B. every 4 weeks and attest to meeting the requirements.

As of May 13, 2020 7.83 million people had applied for the C.E.R.B. and benefits of C\$30.48 billion had been paid.



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### The Canada Emergency Student Benefit ("C.E.S.B.")

The C.E.S.B. is designed to assist students (especially post-secondary students) and recent graduates whose abilities to continue their studies, secure and retain summer employment, pay their bills, or pay tuition costs are adversely impacted by the COVID-19 pandemic.

The C.E.S.B. amount is C\$312.50 per week in general for eligible students and C\$500 per week for eligible students with dependents or permanent disabilities and is payable in four-week installments of C\$1,250 or C\$2,000 respectively.

To be eligible for the C.E.S.B., the applicant must be a student who is a Canadian citizen, permanent resident, or an individual registered as an Indian under the Indian Act. For this purpose, a student is an individual who meets any of the following conditions:

- The individual is enrolled at any time between 1 December 2019 and 31 August 2020 in a post-secondary educational program that leads to a degree, diploma or certificate.
- The individual has graduated from secondary school in 2020, has applied for enrollment in an eligible post-secondary educational program that is scheduled to begin before 1 February 2021, and plans to enroll in the program if accepted.
- The individual is a member of a class of persons that is prescribed by regulation<sup>8</sup>.

In addition, the applicant, for reasons related to COVID-19, must be (i) unable to work, (ii) seeking work and unable to find it, or (iii) working but being paid less than a specified amount<sup>9</sup> during the four-week period for which applicant applies for the C.E.S.B. The applicant cannot receive income from employment or self-employment of more than the yet to be announced specified amount, EI benefits, allowances or the C.E.R.B. during the four-week period for which the applicant applies for the C.E.S.B.

### ENFORCEMENT ACTION AND OTHER EXTENSIONS

The C.R.A. has suspended collection activities on new debts and is willing to provide more flexible payment arrangements. Pre-existing debts will be addressed on a case-by-case basis.

The C.R.A. has reduced its efforts to contact S.M.E.s to initiate any income tax audits or post assessment GST/HST audits until further notice. The C.R.A. also intends to limit its interactions with taxpayers to



high risk and exceptional cases. Other audits have been temporarily suspended.

The deadline for tax objections has extended for objections that are due between 18 March 2020 and 29 June 2020, to 30 June 2020. Objections filed by taxpayers regarding benefits and credits will continue to be processed, however, the C.R.A. is holding other objections in abeyance and will not attempt to collect the related tax balances.

The Tax Court of Canada has extended all its normal deadlines.

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<sup>1</sup> The original program was scheduled to end on in May 2020 but has been extended through August 2020.

<sup>2</sup> On May 15, 2020 the government announced that it will adjust these criteria to allow more businesses to qualify but no details have been provided

<sup>3</sup> Employers must select an approach when first applying for the C.E.W.S. and use that approach for the entire duration of the program

<sup>4</sup> The original program was scheduled to end after Period 3 but has been extended through August 2020. Revised eligibility criteria have been promised but details have not yet been released.

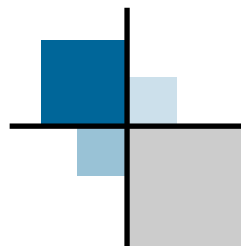
<sup>5</sup> Commercial Real Property is defined as commercial properties with small business tenants. Commercial properties with a residential component and multi-unit residential mixed-use properties would equally be eligible with respect to their small business tenants.

<sup>6</sup> These criteria are under review

<sup>7</sup> Small businesses can compare revenues in April, May and June of 2020 to that of the same period in 2019 to measure revenue losses. They can also use an average of their revenues earned in January and February of 2020.

<sup>8</sup> Regulations have not yet been issued.

<sup>9</sup> Yet been announced



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## U.S.: CARES ACT LOANS AND BUSINESS TAX PROVISIONS AND I.R.S. ANNOUNCEMENTS ON STRANDED INDIVIDUALS \*

By Stanley C. Ruchelman & Galia Antebi  
*Ruchelman P.L.L.C. (U.S.A.)*

*Effective as of 24 April 2020*

This article explains important provisions of the Corona Virus Aid, Relief, and Economic Security Act ("CARES Act" or "Act") signed into law on 27 March 2020. As will be seen, the CARES Act is an agglomeration of tax law and rules to assist small business. The concepts do not always mesh easily.

### PAYCHECK PROTECTION PROGRAM ("P.P.P.")

The P.P.P. authorizes the Small Business Administration ("S.B.A.") to guarantee loans made by lenders on favorable terms to eligible small businesses affected by COVID-19. If qualified, Federally guaranteed loans are available in principal amounts of up to \$10 million to be used for specified expenditures. If certain conditions are met, the loan may be forgiven in whole or in part with no adverse income tax consequences. The P.P.P. applies to loans of up to the lesser of \$10 million or 2.5 times average monthly payroll.

#### 1. Which businesses are eligible under the P.P.P.?

The following businesses are eligible to receive a loan under the P.P.P. provided they were conducting operations on 15 February 2020, as demonstrated by salary and payroll tax expenses on that day:

- a. Any U.S. business concern, veterans' organization, nonprofit, or tribal business concern that employs not more than greater of:
  - i. 500 employees having the U.S. as their principal place of residence or
  - ii. The standard in number of employees established by the S.B.A. for the industry of the borrower.
- b. A business with more than one location is eligible if it employs 500 or fewer employees per physical location and falls within the "accommodation and food services" sector with the North American Industry Classification System ("N.A.I.C.S.") code that begins with 72.

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- c. Sole proprietors, independent contractors, and self-employed individuals may be eligible provided that proper documentation of business operations exists, such as Forms 1099–MISC received from clients and customers who make a payments to an independent contractor in the course of their businesses, or a tax return that reports business expenses on a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, on Form 1040, *Individual Tax Return*, or a Schedule K-1, *Partner's Share of Income, Deductions, Credits, etc.*, issued by a partnership or L.L.C.

### 2. In determining whether a business concern qualifies for a P.P.P., is it looked at by itself or with affiliates?

For purposes of the determining the number of employees of an applicant to the P.P.P., the S.B.A. looks at the applicant and all its affiliates collectively. Business concerns and entities are affiliates of each other when one controls or has the power to control the other, or one or more third parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power exists. Affiliation can exist under any one of the following four different sets of rules:

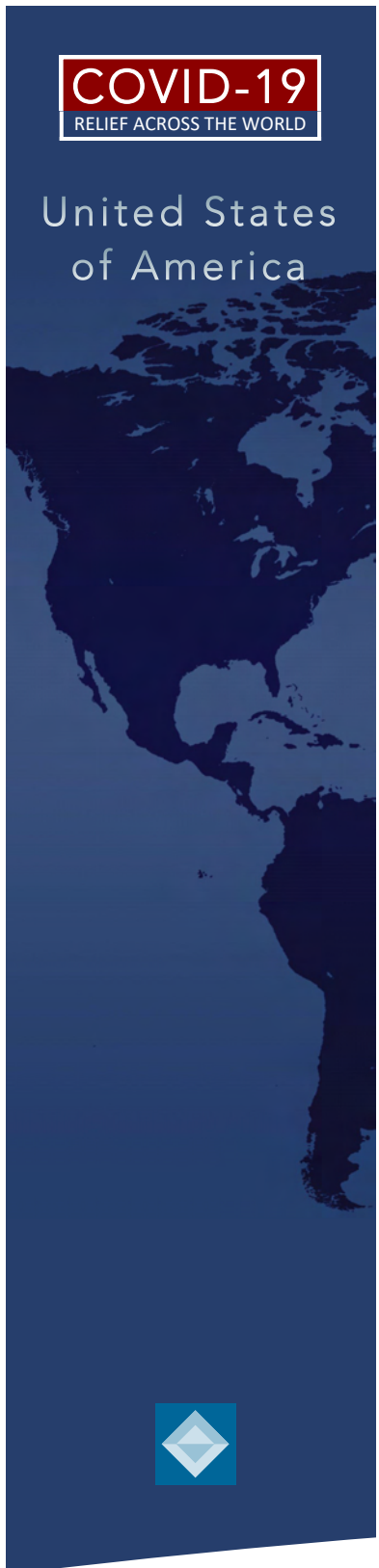
- a. Affiliation based on ownership. Under this test, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50% of the concern's voting equity. A minority shareholder may be in control for this purpose if the individual or entity has the ability under relevant organizing documents to prevent a quorum or block action by the board of directors or shareholders.
- b. Affiliation arising under stock options, convertible securities, and agreements to merge. Under this test, the S.B.A. considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. Such options, convertible securities, and agreements are treated as though the rights granted have been exercised if the effect is to make each entity the affiliate of the other. This rule does not apply in order to break affiliation that exists under another rule. The rule is also not applied if the options, convertible securities, or agreements are based on the occurrence of conditions precedent incapable of fulfillment, speculative, conjectural, or unenforceable, or where their probability of materializing is extremely remote.
- c. Affiliation based on management. Affiliation arises where the C.E.O. or President (or other officers, managing members, or partners who control the management) of a business concern also control the management of one or more other concerns.





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Affiliation also arises where the Board of Directors or management of one concern controls the Board of Directors or management of another concern, or a single individual, concern or entity controls the management of the applicant through a management agreement.

- d. Affiliation based on identity of interest. Affiliation arises when there is an identity of interest between close relatives with identical or substantially identical business or economic interests. This includes fact patterns involving relatives, individuals, firms with common investments, or firms economically dependent through contractual or other relationships (e.g., an important vendor or customer where 85% of receipts originate with the other party over the last 3 fiscal years, on average). For relatives, this can include operating similar concerns in the same geography. For common investments, this can arise when individuals or firms own a substantial portion of multiple concerns in the same or a related industry, frequently, doing business with each other, or sharing resources, equipment, locations, or employees, or providing loan guarantees or financial or managerial support to each other. Once the S.B.A. makes the determination to aggregate interests, the conclusion can be rebutted by facts that demonstrate the absence of control. S.B.A. generally defers to the judgment of the S.B.A. lender on this count.

Affiliates must be disclosed on the application form. The affiliation rules for businesses are waived for businesses operating in the accommodation and food services industry, in addition to any business operating as a franchise that is assigned a franchise identifier code by the S.B.A.<sup>1</sup>, and certain businesses that received Small Business Investment Company financing.

### 3. Are foreign-owned business concerns eligible under the P.P.P.?

Yes, although the scope is not entirely clear as of the date of this article. Initially, foreign-owned businesses appeared to be expressly ineligible in the sample application form that was published. However, the troublesome language was deleted in the final application form published by the S.B.A. Anecdotal experience is mixed. One adviser we know reports that all foreign-owned businesses advised by his firm have had their P.P.P. loan applications denied. Another adviser reports that at least one foreign-owned U.S. business concern had a P.P.P. loan application approved. Outcomes may be dependent on the bank administering the program and foreign-owned enterprises may have greater chances of succeeding with smaller banks with which they are an important customer under an existing relationship.

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The open question is whether guarantees by U.S. management will be required as is normally the case in other S.B.A. loans to foreign-owned businesses, such as the Economic Injury Disaster Loan Emergency Advance Program ("E.I.D.L."). For E.I.D.L. loans that are issued to business concerns that are not foreign-owned, guarantees are required from the owners of the business. For such loans issued to foreign-owned business concerns, security must be posted, and management guarantees are required. See pages 121 and 122 of the S.B.A.'s Standard Operating Procedure (SOP) 50 10 5(K), Subpart B, Chapter 2.

**4. On what date must a business actually be operating?**

The business must have been operating on 15 February 2020, as demonstrated by the payment of salary and payroll taxes or the payment of fees to independent contractors and the reporting of such fees on Form 1099-MISC in prior years.

**5. In what circumstances can a business concern that meets the eligibility test be disqualified from applying for a P.P.P. loan?**

A business concern can be disqualified in any of the following circumstances:

- a. It is engaged in any activity that is illegal under federal, state, or local law,
- b. The claim for employment relates to household help such as nannies or housekeepers,
- c. An owner of 20% or more of the equity of the business concern is incarcerated, on probation, on parole, presently subject to an indictment or has been convicted of a felony within the last five years, or
- d. The business concern or any business owned or controlled by the concern or any of its owners has obtained a direct or guaranteed loan from the S.B.A. or another Federal agency that is currently delinquent or for which there has been a default within the last seven years and as a result caused a loss to the government.

**6. How is the eligible loan amount determined?**

An eligible borrower may borrow up to \$10 million, subject to a cap. The cap is 250% of the average total monthly payroll costs incurred during the preceding year.

Payroll costs includes the sum of all payments for employee compensation, including salary, wages, commissions, cash tips, payment



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of vacation, parental-, family-, medical-, or sick-leave, allowance for dismissal or separation, payment required for group health benefits (including insurance premiums); payment of retirement benefits; or payment of state or local tax assessed on employee compensation. Employee compensation is capped at \$100,000. In broad terms, this means that monthly salaries taken into account are capped at \$8,333.33. Salaries paid to employees outside the U.S. are not taken into account.

For sole proprietors or independent contractors, the sum of payments of any compensation to a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation, is taken into account up to \$100,000 in a year.

### **7. How must the loan be used in order to be eligible for forgiveness, discussed below?**

During the covered period, the proceeds of a loan received under the P.P.P. may be used for the payment of:

- a. Payroll costs,
- b. Rent and utilities, and
- c. Interest on any mortgage obligation and any other debt obligations incurred prior 1 March 2020.

Payroll costs consist of compensation to employees whose principal place of residence is in the U.S. Compensation includes salary, wages, commissions, or similar compensation. Also included are:

- a. Cash tips or the equivalent are included in compensation based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips,
- b. Payments for vacation, parental, family, medical, or sick leave,
- c. Allowances for separation or dismissal,
- d. Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement,
- e. Payment of state and local taxes assessed on compensation of employees; and
- f. For an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

Although at the time of this writing there is no official guidance on point, self-employment income in the context of a partnership generally is thought to be covered in self-employment income. The key issue here is

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the way self-employment income is measured for this purpose. One possible way looks to a partner's distributive share of income that is subject to self-employment tax. Another measure might be keyed to guaranteed payments received by partners.

**8. What is the interest rate for a P.P.P. loan and the maturity date and is there a prepayment penalty?**

The interest rate is 1% and the maturity date is two years from the date of issuance of the funds. The maturity date is significantly shorter than the maximum dated mentioned in the statute, which is ten years. The S.B.A. determined that a two-year term is sufficient because economic disruptions are expected to abate well before then. The maximum interest rate mentioned in the statute is 4% and the S.B.A. initially mentioned 0.5%. However, banks were reluctant to participate if the interest rate were that low.

There is no prepayment penalty on any payment made prior to 31 December 2020.

**9. How does the forgiveness of the loan feature work?**

The debt proceeds actually used to pay the following expenses during the 8-week period beginning on the date of the origination of a covered loan can be forgiven mostly or wholly free of income tax, provided that 75% of the proceeds of the P.P.P. are used to fund payroll costs.

- a. Payroll costs (as defined above),
- b. Interest payment on a covered mortgage obligation incurred before 15 February 2020, for which the debt is secured by a mortgage on real or personal property,
- c. Payments of rent obligated under a lease in force before 15 February 2020, and
- d. Payment of utility bills such as electricity, gas, water, transportation, telephone, or internet access for which service began before 15 February 2020

In principle, the amount of the loan used to pay the above expenses for the 8-week period can be completely forgiven. However, the forgiven amount of the loan can be reduced by several factors. As mentioned above, if the 75% allocation to payroll costs requirement is missed, the shortfall will not be forgiven. In addition, and assuming that the balance of the proceeds have been applied to other qualified items, a reduction in monthly average employee headcount or a reduction to any employee's salary greater than 25% will also reduce the portion of the loan that can be forgiven. The monthly average headcount during the period following receipt of funds under the loan is compared to the prior year.





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#### 10. Is forgiveness automatic?

The forgiveness of the loan is not automatic. The borrower must apply for forgiveness to the originating lender including the following:

- a. Documentation verifying the number of full-time equivalent employees on payroll and pay rates. Payroll tax filings, and unemployment insurance filings can be used for this purpose,
- b. Documentation including cancelled checks, payment receipts, transcripts of accounts verifying payments of other qualified expenses (including debt obligations incurred prior to 1 March 2020),
- c. Any other documentation determined to be necessary by the S.B.A.,
- d. In addition, a certification is required from the borrower acknowledging that the amount of the loan that will be used to pay the qualified expenses and that the documentation presented is true and correct. As a false certification is a felony, the individual making the borrower's certification has a personal interest in ensuring all representations are true.

The amount of the debt forgiven will not be treated as income from the forgiveness of debt, ordinarily subject to U.S. Federal income tax. Also, as the Federal government will repay the bank, it is expected that the debt forgiveness will not adversely affect credit scores.

#### 11. Recent Developments

The S.B.A. P.P.P. program ran through all funds appropriated by 16 April 2018. Over 1.6 million loans were granted. As it turned out, some loans were made to publicly traded corporations that were likely not within the definition of a small business for purposes of the S.B.A. rules. Other loans were made to well-endowed universities who had the capital to continue to pay employees. Under public pressure and fear of criminal prosecution for the person signing the loan application, many of corporations and universities announced that the funds would be returned. Subsequently, S.B.A. P.P.P. Q&A guidelines were revised warning publicly traded corporations having substantial market value and access to capital markets that they likely are not able to make a good faith certification that the P.P.P. loan is necessary to support the ongoing operations of the applicant.

On 24 April 2020, a fourth stimulus package was signed into law, the Paycheck Protection Program and Health Care Enhancement Act. It includes \$310 billion to replenish the P.P.P. program, \$60 billion for a separate emergency loan and grant program discussed below known as the Economic Injury Disaster Loan program, \$75 billion for hospitals and



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health-care providers, and \$25 billion for a new coronavirus testing program.

## ECONOMIC INJURY DISASTER LOAN (“E.I.D.L.”)

The CARES Act expands the S.B.A.’s existing Disaster Loan Program under Section 7(b)(2) of the Small Business Act to provide financial relief to small businesses affected by the Coronavirus.

### 1. What is the purpose of the E.I.D.L. Program?

The E.I.D.L. program provides assistance to a small business located in a declared disaster area when the S.B.A. determines it is unable to obtain credit elsewhere. It is an existing program that is designed to assist small businesses suffering from a disaster such as a hurricane, flood, tornado and the like.

A small business that meets the S.B.A. Size Standard<sup>2</sup> is eligible to receive a loan under the E.I.D.L. program. In general, size standards define the largest size a business can be to participate in government contracting programs and compete for contracts reserved or set aside for small businesses. Size standards vary by industry, and are generally based on the number of employees or the amount of annual receipts of the business, generally under the North American Industry Classification System (NAICS). When determining the size of a business concern, headcount and receipts of affiliates of the applicant small business must be taken into account. More information appears in the S.B.A. regulations<sup>3</sup>.

Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses. EIDLs provide the necessary working capital to help small businesses survive until normal operations resume after a disaster.

Under the E.I.D.L. program, the S.B.A. can provide up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. The loan amount is based on the actual economic injury to the small business and financial needs, regardless of whether the business suffered any property damage. In general, tax returns must be submitted as part of the application process and personal guaranties must be provided by the owners.

### 2. What special modifications have been made to the E.I.D.L. program to address the COVID-19 pandemic?



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The Cares Act modifies certain provisions in the E.I.D.L. program to facilitate the disbursement of funds to a broader class of eligible applicants.

#### *Broader Scope of Applicants*

From 31 January 2020 to 31 December 2020 (“the Covered Period”), the following organizations may apply for E.I.D.L. loans, in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives:

- a. Businesses with 500 or fewer employees,
- b. Sole proprietorships, with or without employees, and independent contractors,
- c. Cooperatives with 500 or fewer employees,
- d. E.S.O.P.’s with 500 or fewer employees, and
- e. Tribal small business concerns.

#### *Waiver of Certain Requirements*

In addition, the Cares Act authorizes that S.B.A. to waive certain requirements that ordinarily must be met when applying of a loan under the E.I.D.L. program. Consequently, the following requirements are waived:

- a. All rules related the personal guarantee on advances and loans of not more than \$200,000 during the Covered Period for all applicants,
- b. The requirement that an applicant must be in business for the one-year period before the disaster, except that no waiver may be made for a business that was not in operation on 31 January 2020, and
- c. The requirement that an applicant be unable to obtain credit elsewhere.

#### *Standard for Approval*

During the covered period, the S.B.A. may approve an applicant based solely on the credit score of the applicant and will not require an applicant to submit a tax return or a tax return transcript for such approval. Alternatively, the S.B.A. may use another appropriate method to determine an applicant’s ability to repay the loan.

#### *Emergency Grant*

During the Covered Period, an eligible entity for an E.I.D.L. loan – as determined under the expanded scope of eligibility – may request an



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advance of \$10,000. In principle, the advance must be made by the S.B.A. within three days after the request is received. While the request must be verified before the advance is disbursed, verification is effected solely by self-certification of the applicant.

An advance may be used for any allowable purpose, including:

- a. Providing paid sick leave to employees unable to work due to the direct effect of the COVID-19 virus,
- b. Maintaining payroll to retain employees during business disruptions or substantial slowdowns,
- c. Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains,
- d. Making rent or mortgage payments, and
- e. Repaying obligations that cannot be met due to revenue losses.

Once the grant is received, an applicant is not be required to repay the advance even if subsequently denied a loan.

## BUSINESS TAX PROVISIONS

The CARES Act provides several tax provisions to provide liquidity for business.

### 1. What is the employee retention credit and how does it work?

The employee retention credit is a refundable payroll tax credit for 50% of wages paid to employees after 12 March 2020 and before 1 January 2021. The credit is available to employers whose operations were fully or partially suspended due to a COVID-19-related shutdown order or whose gross receipts declined by more than 50% when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to employees. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees who are not working due to the COVID-19 virus. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation paid to an eligible employee and includes health benefits.

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The credit for businesses experiencing a downturn, such as a suspension of operations due to a COVID-19-related shutdown order or with decline in gross receipts, for any days in March 2020 should be applied for using the employer's Q2 Form 941, 941-SS, or 941-PR, reporting 50% of the qualified wages for March together with the Q2 qualified wage amount. The credit should not be reported on the first quarter form.

## 2. Have payment of employer payroll taxes been deferred?

Yes. The CARES Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the Federal government with respect to employees. Employers generally are responsible for paying a 6.2% Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by 31 December 2021 and the other half by 31 December 2022. The Social Security Trust Funds will be held harmless under this provision.

Employers receiving a P.P.P. loan and benefiting from debt forgiveness cannot take advantage of this provision.

## 3. May net operating losses now be carried back?

Yes. The CARES Act relaxes the limitations on a corporation's use of net operating losses ("N.O.L.'s"). Under current law, N.O.L.'s are subject to a taxable-income limitation equal to 80% of the taxpayer's adjusted gross income and they cannot be carried back to reduce income in a prior tax year. Now, an N.O.L. arising in a tax year beginning in 2018, 2019, or 2020 can offset 100% of taxable income or alternatively be carried back five years.

If the N.O.L. is carried forward, it would reduce income that is taxed at 21%, and possibly higher rates depending on the outcome of national elections in November. If carried back, it may be usable to reduce income that was taxed at a 35% rate, but interaction with other tax attributes absorbed in the prior year, including general business credits such as foreign tax credits, special deductions, and alternative minimum tax liability in prior years are all items to be carefully considered beforehand.

Several commentators have cautioned that a carryback of an N.O.L. to a year prior to 2018 may be applied to reduce income that was subject to the one-time Code §965 Transition Tax adopted in the Tax Cuts and Jobs Act of 2017, when the U.S. adopted a dividends received deduction for dividends from 10% foreign-owned companies. The Transition Tax was imposed for 2017 on the income of 10% shareholders of foreign

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corporations. The rate the tax was limited to 8% for earnings invested in operating assets and 15.5% for earnings invested in financial assets. Under the Act, carrying back to years in which the taxpayer was subject to Transition Tax will result in the taxpayer being treated as having made an election not to apply the N.O.L. under Code §965(n).

Taxpayers may make an irrevocable election under the CARES Act to exclude years in which Transition Tax liability existed from the carryback. Such elections must be made by the extended due date of the 2020 return by attaching a statement for each year for which the taxpayer intends to make the election, stating that taxpayer is electing to apply Code §172(b)(3) under Rev. Proc. 2020-24 and the taxable year to which the statement is applicable.

Other commentators have pointed out that liquidity from the adoption of an N.O.L. carryback rule will not be realized until the close of the 2020, when the losses from COVID-19 will be available for carryback. However, under Rev. Proc. 2020-26 taxpayers can potentially obtain a refund within 90 days (for years other than those affected by Transition Tax) by filing Form 1139, *Corporate Application for a Tentative Refund* (for corporations) or Form 1045, *Application for Tentative Refund* (for individuals, trusts, and estates), subject to an extended due date of 18 months (or 30 June 2020 for the 2018 tax year). The I.R.S. will start accepting these forms via fax (844-249-6236 for Form 1139, and 844-249-6237 for Form 1045) starting on 17 April 2020. The I.R.S. encourages taxpayers to wait till the 17<sup>th</sup> and fax the forms to avoid delays caused by physical mail during the crisis.

New York State and New York City have decoupled from the Federal N.O.L. carryback rules. Neither jurisdiction has sufficient free cash to issue refunds of corporate tax.

#### **4. How are pass-through losses from partnerships and L.L.C. affected by the CARES Act?**

Prior to 2018 sole proprietors and individuals who were members of a partnership or L.L.C. in which they were active participants could use the full amount of losses generated by the business to reduce other taxable income. Effective for 2018, "excess business losses" of individuals were not allowed for the taxable year. Such losses were carried forward and treated as part of the taxpayer's N.O.L. in subsequent taxable years. An excess business loss was defined as the amount by which aggregate deductions of the individual exceed the sum of (i) aggregate gross income or gain of the taxpayer plus (ii) a threshold amount of \$250,000 or \$500,000, depending on marital status.

The CARES Act modifies these loss limitation rules on a retroactive basis. For each year in the three-year period that begins in 2018, individuals can utilize excess business losses to access critical cash flow to maintain operations and fund payroll for their employees. In 2021, the loss limitation rule will come into effect again, and will stay in effect until 2026.

**5. How are refundable alternative minimum tax (“A.M.T.”) credits affected by the Cares Act?**

The corporate A.M.T. was a tax computed at lower rates but on a broader tax base. If the A.M.T. produced a tax greater in amount to the ordinary corporate income tax the excess amount was added to the income tax. If in subsequent years the regular corporate tax was greater than the A.M.T., a taxpayer was entitled to a refund.

The T.C.J.A. repealed the A.M.T., allowing unused A.M.T. credits to be carried forward as refundable credits over a four-year period beginning in 2018. The CARES Act accelerates the ability of companies to recover those A.M.T. credits, permitting companies to obtain additional cash flow during the COVID-19 emergency.

**6. How is the limitation on deductible business interest of a corporation under Code §163(j) affected by the CARES Act?**

In 2018, a cap was placed on deductible interest expense of corporations. The cap was 30% of adjusted taxable income, which more or less equated to the equivalent of E.B.I.T.D.A., with certain modifications to conform with tax concepts.

For 2019, the CARES Act increases the cap place on allowable interest expense to 50% of adjusted taxable income. The provision temporarily increases the amount of interest expense businesses are allowed. More importantly, for 2020, a taxpayer may elect to use adjusted taxable income for 2019 to compute the amount of the cap, recognizing that for most, 2019 will be a year of greater profits than 2020.

**7. How does the CARES Act correct a technical error regarding “qualified improvement property”?**

The CARES ACT makes a technical correction to the T.C.J.A. that enables businesses, especially in the hospitality industry, to write off immediately the costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.

**8. What is the U.S. Federal income tax treatment of forgiveness of any portion of a P.P.P. loan?**





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As stated above, forgiveness for those borrowers meeting the requirements will be excluded from the borrower's gross income. Therefore, no U.S. Federal income taxes will be owed in consequence of either receiving a P.P.P. loan or later meeting the requirements to have it forgiven. However, the I.R.S. announced that the funded expenses may not be deducted. Whether this position is firm remains to be seen.

## I.R.S. PRONOUNCEMENTS ON STRANDED FOREIGN INDIVIDUALS

Recognizing that the global outbreak of the COVID-19 virus has significantly limited the ability of many individuals to leave the U.S., regardless of having been infected, the I.R.S. has taken several steps to provide relief to individuals and their employees. For example, Nonresident, non-citizen ("N.R.N.C.") individuals who perform services or other activities in the U.S. and foreign corporations who employ individuals or engage individuals as agents to perform services or other activities in the U.S. may be considered engaged in a U.S. trade or business. If the individuals performing those services or other activities are temporarily in the United States solely due to COVID-19 Emergency N.R.N.C. individuals or foreign corporations may technically become engaged in a U.S. trade or business. If a U.S. income tax treaty applies, an N.R.N.C. individual or foreign corporation generally will not be liable to tax on business profits or employee compensation unless the business is conducted through a permanent establishment in the U.S.

To provide relief for those N.R.N.C. individuals and their employers and also for American expats who are stranded in the U.S. by reason of flight restrictions and closed border, the I.R.S. announced three measures for individuals stranded in the U.S.

### 1. Revenue Procedure 2020-20

In this procedure the I.R.S. announces the circumstances in which U.S. presence of up to 60 consecutive calendar days will be presumed to arise from travel disruptions caused by the COVID-19 emergency. Those days will not be counted for purposes of determining U.S. tax residency of a nonresident, non-citizen ("N.R.N.C.") individual. In addition, those days will not be counted for purposes of determining whether an N.R.N.C. qualifies for tax treaty benefits regarding income from personal services performed in the U.S. Typically, the treaty provisions will provide that presence in the U.S. for 183 days or more precludes an individual from being exempt on compensation for work performed in the U.S. on behalf of a foreign employer in circumstance where the compensation is not borne by a permanent establishment in the U.S.





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## 2. Revenue Procedure 2020-27

For expat Americans who claim the benefit for the foreign earned income exclusion and the qualified housing deduction, days of presence in the U.S. can have an adverse effect on entitlement to the benefits. In this procedure, the I.R.S. announces that the two benefits will not be impacted as a result of days spent away from a foreign country due to the COVID-19 emergency based on having departed the country of residence on or after a specified date where it is reasonable to believe that the required time period abroad would have been met in the absence of the COVID-19 emergency. Dates are provided for various geographic locations as the pandemic spread across the globe.

## 3. I.R.S. Frequently Asked Questions and Answers<sup>4</sup>

In two frequently asked questions and answers, the I.R.S. advises that, for up to 60 consecutive calendar days, certain U.S. business activities conducted by an N.R.N.C. individual or foreign corporation will not be counted in determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment. Again, the relief is extended only if those activities would not have been conducted in the U.S. but for travel disruptions arising from the COVID-19 emergency.

<sup>1</sup> [https://www.sba.gov/sites/default/files/2019-04/FrnchsTbL\\_04092019\\_1\\_0.pdf](https://www.sba.gov/sites/default/files/2019-04/FrnchsTbL_04092019_1_0.pdf)

<sup>2</sup> <https://www.sba.gov/size>

<sup>3</sup> [https://www.ecfr.gov/cgi-bin/text-idx?](https://www.ecfr.gov/cgi-bin/text-idx?SID=0ff5f0839abff4eec707b4478ed733c6&mc=true&node=pt13.1.121&rgn=div5)

[SID=0ff5f0839abff4eec707b4478ed733c6&mc=true&node=pt13.1.121&rgn=div5](https://www.ecfr.gov/cgi-bin/text-idx?SID=0ff5f0839abff4eec707b4478ed733c6&mc=true&node=pt13.1.121&rgn=div5)

<sup>4</sup> <https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions>

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