

AN OVERVIEW OF COVID-19 RELATED MEASURES WITHIN THE FRAMEWORK OF BELGIAN TAX LAW, SOCIAL SECURITY LAW AND LEGAL PROCEEDINGS

16th April 2020

In order to limit the economic impact of the coronavirus / COVID-19 outbreak on both businesses and the economically unemployed, several measures aimed at providing financial support have been adopted by the Belgian (federal and regional) governments. This memo provides for a summary of the fiscal and social security measures, as well as other support measures or financial incentives, which shall apply or could be made recourse to when a company is experiencing financial difficulties due to the COVID-19 outbreak, albeit limited to their core.

Next to that, this memo shortly outlines the special arrangements that have been made in respect of holding a general meeting and within the framework of legal proceedings.

1. FISCAL MEASURES

1.1. Postponement of the tax filling deadline

- For **corporate income tax, legal entities income tax, corporate income tax and non-resident tax**, the filling deadline has been automatically postponed from March 16th to April 30th 2020.
- For **VAT and EC sales listing deadlines**
 - Related to February 2020 were postponed to April 6th 2020
 - Related to March 2020 or the first quarter of 2020 were postponed to May 7th 2020

- For the **annual VAT listing** the filing deadline has been postponed to April 30th 2020. In the event of cessation of business, the listing should be filed at the latest at the end of the fourth month following the cessation of the activity subject to VAT.

1.2. Deferred payment

- Payments will be **automatically deferred** for VAT, withholding tax, personal income tax, corporate income tax, legal entities tax and non-resident tax, **whilst being exempted from late payment interests and non-payment fines.**
- **For personal income tax and corporate income tax, legal entities tax and non-resident tax:** as long as it concerns tax assessments established **from March 12th 2020**, the normal period will be **automatically extended by 2 months**. When it concerns tax assessments established **before March 12th 2020** deferred payments, exemption from late payment interests and non-payment fines **can be applied for**, however only for personal income tax and corporate income tax.
- **For VAT:**
 - Payments related to February will be postponed to May 20th 2020
 - Payments related to March and the first quarter of 2020 to June 20th 2020
- **For withholding taxes:**
 - Payments related to February will be postponed to May 13th 2020
 - Payments related to March and the first quarter of 2020 to June 15th 2020

1.3. Accelerated refund of VAT credit

- Any company that files monthly VAT returns can apply for the accelerated refund of their VAT credit related to February 2020. This must be applied for before April 30th 2020.

1.4. Payment by installments for tax debts

- To the extent companies can demonstrate that they are facing difficulties resulting directly from (or “effectively affected” by) the COVID-19 outbreak are eligible for staggered tax payments for debts established **before March 12th 2020**. These companies are also exempt from late payment interests and non-payment fines.

1.5. Depreciation of trade receivables

- According to the tax authorities (*Circulaire 2020/C/45*), the COVID-19 outbreak is accepted as an exceptional circumstance demonstrating the probability of loss, which justifies an exemption from depreciation of a trade receivable.
- However, it must be accurately demonstrated for each trade receivable how the delay in payment resulted directly or indirectly from the COVID-19 outbreak.

1.6. Tax exemption

- Allowances granted to business, the self-employed and natural persons by communities are regions in the context of the COVID-19 outbreak are exempt from income tax.

2. SOCIAL SECURITY MEASURES

2.1. Temporary unemployment

- To the extent it is temporarily impossible to employ workers due to the outbreak, the national employment office RVA will consider all temporary unemployment related to the COVID-19 crisis as “due to force majeure”. The measure shall apply until June 30th 2020. The monthly unemployment allowance will amount to 70% of the capped average wage, with a maximum of 2.754,76 EUR.

2.2. Teleworking

- In case the employer intervenes in the costs of teleworking (internet connection, additional laptops), this can be a tax-free allowance, as well as a beneficial lump sum valuation for social security purposes. A ‘fast track procedure’ has also been put in place.

2.3. Measures for self-employed persons (main occupation) and assisting spouse

2.3.1. *Social security contributions*

- **Deferred payment of social security contributions and exemption from increases:** To the extent there are difficulties to pay social security contributions as a result of the COVID-19 outbreak, deferred payment and exemption from increases of social security contributions may be applied for with the RVA. It concerns the payments of the first and second quarter of 2020. The payments will be postponed by a year with an exemption from late payment interests.

-

- **Reduction of provisional social security contributions:** To the extent one's professional income is below one of the statutory thresholds, a reduction of the provisional social security contributions for 2020 may be applied for.
- **Exemption from social security contributions:** To the extent the persons concerned are not able to pay their social security contributions, they may apply for exemption from contributions for the first and second quarters of 2020.

2.3.2 Sickness and disability

- Medical expenses of the persons concerned, as well those of their family members will be reimbursed by the health insurance fund.
- Those incapacitated for work for at least 8 days are entitled from the first day to a work disability allowance from the health insurance fund.
- To a certain extent, it may be requested to be exempted from social security contributions during the period of illness ('assimilation due to illness').

2.3.3. "Bridging allowance"

- Those who were forced to partially or fully interrupt their business activity (due to the government's cessation of activity measures) are eligible for monthly financial allowance for the months of March and April 2020, as soon as the cessation of activity lasts longer than seven consecutive days.
- The financial support amounts to 1.291,69 EURO per month without family charge and 1.614,10 EURO per month with family charge.
- Remark: shall be granted only insofar as no replacement income is received.

3. EXCEPTIONAL ARRANGEMENTS IN RESPECT OF GENERAL MEETINGS

- Exceptional arrangements were adopted with regard to the attendance of or participation with a general meeting, allowing it to be compatible with both *social distancing* measures on the one hand, and the legal framework of the postponement thereof on the other (*Royal Resolution Number 4 of 09.04.2020*).
- In principle, these exceptional arrangements apply to general meetings (ordinary, special or extraordinary), which should have been or should be convened between March 1st and May 3rd 2020, without prejudice to a possible prolongation thereof, depending on how the COVID-19 outbreak develops.
- **The governing body may choose between the following options in respect of holding a general meeting:**
- **The first option** is that the governing body **may choose to convene the general meeting**, however only when compliance with the current extraordinary COVID-19 measures in force can be guaranteed and as long as the shareholders will be allowed to exercise their voting rights and their right to pose questions.

In addition, even in the absence of any statutory authorization, the governing body may impose on the participants in each general meeting to exercise their rights exclusively by remote voting (before the general meeting) *(i)* and by granting a proxy (also before the general meeting), compliant with the conditions laid down in the Companies and Associations Code. The governing body may forbid any physical presence of the shareholders, members or other persons allowed to attend the general meeting, when it cannot guarantee compliance with the current *social distancing* measures in force. In addition, it may allow the participation of every general meeting with electronic means of communication.

- **Secondly**, the governing body may **postpone** the general meeting, also when it already has been convened. In such event, a number of statutory terms shall be extended respectively.

4. MORTGAGE AND LOANS

4.1. Postponed mortgage payments

- A maximum of six month's deferment of payment, whereby the payments shall resume after the period of deferment has expired and the duration of the credit shall be extended by that period. Interests remain due. Certain specific conditions must be met.

4.2. Federal government provides for a financial guarantee for loans up to 12 months

- It concerns a guarantee that covers potential losses due to loans that cannot be repaid, up to an amount of 50 billion EUR.

4.3. Crisis warranty

- Companies and self-employed workers can have a bridging loan guaranteed for existing debts – for wage payment, purchase of raw materials or outstanding invoices etc. – that cannot be paid due to the coronavirus crisis. This warranty can be obtained on top of existing guarantees for investment loans and working capital. 1,000 loans of EUR 100,000 can be guaranteed (below the 75% regional warranty). This measure is applicable until the end of 2020.

5. ADDITIONAL FINANCIAL INCENTIVES AND INVESTMENT GUARANTEES ADOPTED BY THE REGIONS OF FLANDERS, WALLONIA AND BRUSSELS-CAPITAL

5.1. For companies physically located in the region of Flanders

- **“Nuisance incentive”** of 4.000 EUR for companies that were forced to interrupt their business activities (following governmental imposition of cessation of activity). Companies that only have to close during weekend are entitled to a one-off premium of 2.000 EUR. In addition, all companies affected will receive 160 EUR per day, starting from the 21st day of closure (from the 4th of April 2020 on). To be requested not later than the 30th day of forced closure.
- **Compensation premium** for companies that are not obliged to close, but are affected by a turnover less of at least 60% between March 14th and April 30th 2020:
 - A one-off premium of 3.000 EUR for self-employed persons (both main and secondary occupation, the latter, however, only provided that they pay social security contributions due to their levels of income).
 - A one-off premium of 1.500 EUR for self-employed persons in a secondary occupation with an income between 6.996,89 and 13.993,78 EUR.
- **SME Growth subsidy:** a grant may be applied for via government agency VLAIO.
- **Increased flexibility in requirements for support measures and subsidies:** a great number of companies in need of financial support due to the COVID-19 outbreak can benefit from a considerable amount of subsidies granted by VLAIO.
- **“Coronavirus crisis guarantee”:** Flanders’ government has expanded investment firm PMV’s ‘generic’ guarantee capacity of EUR 1.9 billion by adding a coronavirus crisis guarantee of EUR 100 million. The associated one-time premium rate has been

lowered to 0.25% instead of 0.5%. Under the generic guarantee scheme, which will be fully deployed, an existing credit, line of credit or previously guaranteed lease can be extended. The additional coronavirus guarantee is meant to:

- make it easier for companies to receive bank financing for their working capital if they have been unable to pay outstanding invoices due to the COVID-19 outbreak;
 - enable companies and self-employed individuals to have a ‘bridging loan’ guaranteed for existing non-bank debts for up to 12 months (adding 9 months to the 3-month period under the ‘generic’ guarantee scheme);
 - allow guarantees for bank debts – in addition to supplier debts – related to existing lines of credit or non-guaranteed investment loans (provided that that the bank is also prepared to grant at least 3 months of payment deferral or to maintain lines of credit).
- **Payment suspension for SMEs:** Entrepreneurs benefitting from the Start-up Loan, Co-financing and Co-financing+ schemes (granted by PMV/z) are temporarily not required to repay this financing. The direct debits foreseen for repayment of capital and/or interest are automatically suspended for all borrowers. The suspension is valid for 3 months and will be extended to 6 months if necessary.
 - **Support for the tourism industry:** The (regional) government of Flanders shall make available 5 million EUR for youth and social tourism measures. Additionally, the governmental agency VLAIO will not collect rent from youth hostels, adding up to an additional 1 million EUR in support.

5.2. For companies physically located in the region of Brussels-Capital

- **A one-off premium** of 4.000 EUR for businesses, shops and establishments which were obliged to close as a result of government measures, do not employ more than fifty employees and are active in a particular sector.

5.3. For companies physically located in the region of Wallonia

- A **one-off premium** of 5.000 EUR for companies, shops and establishments which were obliged to close as a result of government measures.

6. LEGAL PROCEEDINGS

6.1. Extension of limitation periods and other terms of judicial proceedings, as well as the extension of the terms of the administration of justice and the written procedure before the courts

- The limitation periods and other terms applicable to judicial proceedings of civil claims which expire between April 9th and May 3rd 2020 are automatically **extended to one month after expiry of that period**. Such extension is also automatically in place for actions which already have been brought or must be brought, under certain circumstances.
- At any stage of justice, the parties may decide jointly to let the procedure proceed in writing. To the extent one of the parties objects to the application of this procedure, the case will be postponed indefinitely or to a definite date. If none or at least one, but not all, of the parties objects, the judge may allow the case to proceed through videoconference or take the case under consideration without oral argument.

7. OTHER MEASURES

7.1. Flexibility in executing a federal public contract

- No fines or sanctions will be imposed by the federal government in case a federal public contract incurs delays or cannot be executed due to the COVIC-19 outbreak.

8. SPECIFIC REMARKS IN RESPECT OF TELEWORK

Two specific remarks should be made with regard to Belgian residents who are employed abroad, but have to temporarily telework from home due to the COVID-19 measures. First of all, on the mere basis their physical presence of the worker in Belgium, the Belgian tax authorities acquire tax jurisdiction rights over their (foreign) income, at least to a certain extent. These workers could also possibly become subject to the Belgian social security scheme under Article 13.1.a of the European regulation 883/2004, if the disrupted working pattern would cause him to exceed the 25% threshold thereof.

Please take notice, that we cannot and may not provide accurate and complete legal advice applicable on a case-by-case basis within the framework of this overview. Such is particularly taking into considering the exceptional context and rapidly developing and changing measures aimed at tackling the COVID-19 outbreak.

Therefore, if you have any further questions, do not hesitate to contact us.

Tax

BELGISCHE TREUHAND

Mr. Guido HENNES

Guido.hennes@belgischetreuhand.be

Legal

KOCKS & PARTNERS

Mr. David DIRIS

david.diris@kockspartners-law.be

Ms. Diana RJABYNINA

diana.rjabykina@kockspartners-law.be