

**AN OVERVIEW OF COVID-19 RELATED MEASURES WITHIN
THE FRAMEWORK OF BELGIAN TAX LAW, SOCIAL
SECURITY LAW AND LEGAL PROCEEDINGS
(December 1st 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 filing deadline

- For **corporate income tax, legal entities income tax, corporate income tax and non-resident tax**, the filing deadline has been automatically postponed from November 16th to November 30th 2020 for filings that should have been completed between November 16th and November 30th 2020.
- The filing deadline for companies with balance sheet date from October 1st until December 30th 2019 is no longer calculated based on this date, but is based on the date of the General Assembly. After the General Assembly the filing can be completed during a period of 7 months. This term is extended with 10 weeks..

1.2. Deferred payment

- 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.

- Payments will be **automatically deferred** for VAT and withholding tax **for two months, whilst being exempted from late payment interests and non-payment fines.**

This deferral applies:

- **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
- Payments related to April to July 20th 2020
- As of May 2020 normal submission deadlines apply

- **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
- Payments related to April to July 15th 2020
- As of May 2020 normal submission deadlines apply



1.3 Carry-back for corona losses

- Self-employed persons and companies can use a carry-back mechanism to bring forward their estimated 2020 losses once, by offsetting them against the profits or gains of 2019. This allows them to reclaim their advance payments, in part or in full, and to lower their tax bill for income year 2019.
 - **For personal income tax and non-residents tax (natural persons)**
 - Self-employed natural persons can reduce their taxable profits and income of 2019 (assessment year 2020) by the estimated losses of crisis year 2020 (assessment year 2021). The exempted amount will be added to the taxable base of assessment year 2021. Application needs to be made by September 15th 2020 for personal income tax and November 5th 2020 for non-residents tax.
 - **For corporate income tax and non-residents tax (companies):**
 - a **temporary exemption because of losses** in a tax year that is closed between March 13th 2019 and July 31st 2020 can be used once. The losses that can be taken into



account need to made in the taxable period following the closing.

- A **temporary exempted tax reserve** can be created, for one taxable period closed in a period between March 13th 2019 and December 31st 2020.

1.4. Payment by instalments 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 arising out VAT, withholding tax, personal income tax, corporate income tax and legal entities income tax. These companies are also exempt from late payment interests and non-payment fines. The deadline for application is December 31st 2020.

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

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

1.7. Exemption payment of withholding tax

- Employers, who used the system of temporary unemployment for at least one uninterrupted month between March 12th and May 31st 2020, can obtain an exemption of 50% of the difference between the withholding tax of May as reference period and the withholding tax of June, July and August.

1.8. Reconstruction reserve

- Companies are able to exempt a part of their profit for tax periods 2021, 2022, 2023 by recording that profit as a 'reconstruction reserve' in order to rebuild their equity to



pre-COVID-19 levels. The maximum amount is limited to the company loss at the closing of the tax year in 2020. This measure is not yet operational, but a legislative proposal is pending.

1.9. Investment deduction

- The increased investment deduction of 25% for investments made between March 12th and December 31st 2020 is extended for investments made until the end of 2020.

1.10. Support measures for flat-rate taxable persons or companies

- A certain amount of craft professions who are subject to a flat-tax rate can benefit from new fiscal measures regarding the calculation of the tax rate for the 2nd and 3rd quarter of 2020

1.11. Advance payments

- Companies facing difficulties regarding liquidity can benefit from an increased percentage for the benefit of advance payments for the third and fourth quarter.



- Persons or companies subject to VAT are not obliged to make the mandatory advance payment for VAT for December in case of monthly declaration or for the 4th quarter in case of quarterly declaration.

1.12. 100% deduction reception costs

- “Reception costs” made in the period of June 8th 2020 and December 31st 2020 will be 100% deductible instead of the usual 50%.

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 make a distinction between sectors and companies that are “exceptionally hard affected” by the crisis and those that are not. Both can still use the possibility of temporary unemployment, but only the first category can use a simplified procedure.



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 all the quarters of 2020
- **Compensation for social security contributions:** To the extent that employers were forced to close because of the Ministerial Decrees, they may apply for an allowance to cover the net employer contributions for the 3rd quarter 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 a monthly financial allowance for the months March until June 2020.
- Those who are **forced to partially or fully interrupt their business activity** during the months July until December 2020, may still apply for an allowance, but only under strict conditions.
- Those who had to close because, but **were not forced to close**, are eligible for the same allowance, as long as the cessation lasts longer than seven consecutive days during the period from March until June 2020 *or* during the period from July until August 2020.
- The financial support amounts to 1.291,69 EUR per month without family charge and 1.614,10 EUR per month with family charge. A partial allowance is possible.
- Those that were **forced to close following as of October 19th 2020** (bars and restaurants, non-essential shops, recreational indoor activities, ...) and self-employed persons that were **not forced to close, but that are more than 60% dependant** of a sector that is forced to close, are



entitled to a doubled allowance of respectively 3.228,20 EUR and 2.583,38 EUR. A partial allowance is possible.

- 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 10th and June 30th 2020.
- **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 of mortgage loan until December 31st 2020, 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. Therefore, it is easier for viable companies with financial difficulties to apply for a "bridging loan".

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.

4.4. Postponed payment of corporate loans

- Companies may apply for a postponement of payments of a corporate loan until December 31st 2020. 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.



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

- **New Flemish Protection Mechanism** for companies that were *or* forced to close *or* have a decrease in turnover of 60% compared to 2019 during the period of October 1st and November 15th 2020 *or* have a decrease in turnover of 60% during the period of October 19th and November 15th 2020.
 - The compensation consists of a one-off premium that amounts to 10% of the turnover with a minimum of 1000 EUR and a maximum depending on the size of the company.
 - For self-employed persons in a secondary occupation the one-off premium amounts to 10% of the turnover with a minimum of 600 and a maximum depending on the size of the company.

- **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.
- **Support for the event industry:** for the event industry a variety of measures have been taken ranging from loans and allowances to temporary unemployment
- **“Encouragement premium”** for companies with employees that are faced with a decreasing production or turnover in order to avoid dismissals.



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

- **Support for the event industry:** an allowance ranging from 3000 EUR to 9000 EUR depending on the circumstances.
- **Support for bar, pubs and restaurants:** an allowance of 3000 EUR per active business unit depending with a maximum of 15.000 EUR.

5.3. For companies physically located in the region of Wallonia

- Compensatory indemnities to Small and Medium sized Walloon Enterprises and other self-employed persons. The amount of the indemnity is based on a loss of 30% based compared to the income of 2019 with a minimum of 3000 EUR and the maximum depending on the number of employees.



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 expired between April 9th and May 17th 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.
- Until June 17th 2020, parties could decide, at any stage of justice, 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 COVID-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.

Secondly, 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 pursue a substantial part of his activity in Belgium. However, in specific circumstances (eg. no change of location for more than 183 days) exceptions are applicable.



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 at info@kockspartners-law.be

