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COVID-19 Crisis: French Tax and Social Contributions Measures for Businesses

The French government has announced emergency measures regarding taxes and social contributions in order to protect businesses from the impact of the crisis.

Key Points:

- Businesses may request delays for the payment of taxes and social contributions.
- Refunds may be granted on a case-by-case basis.
- Tax credits repayments are accelerated.
- Large companies distributing dividends are generally excluded from the governmental support.
- Certain procedural and filing deadlines are adjusted to take into account the crisis.

Since March 12, 2020, the French government has announced immediate measures that aim to protect businesses from the impact of the COVID-19 crisis, including at this stage €100 billion worth of direct tax and social breaks as well as financial support for businesses implementing partial unemployment measures. These measures are in addition to a guarantee by the French state of up to €300 billion in respect of bank loans granted to businesses and the creation of a solidarity fund to provide all small businesses and independent workers with financial aid of at least €1,500. The government also indicated that nationalization of certain businesses might be contemplated, if necessary.

On March 27, 2020, the French government announced that its support will be denied to certain companies that will proceed to dividend distributions to the benefit of their shareholders in 2020. Such companies or groups of companies would be those employing more than 5,000 persons or having a consolidated annual turnover of at least €1.5 billion in France.

In a press release of April 3, 2020, the French government also announced an extension of the possibilities of deferring social contributions and direct corporate taxes due in April.

Tax Measures

Postponed deadlines for the payment of taxes, potential refunds of taxes, and accelerated repayment of tax credits

- Businesses may request from their tax office a delay of up to three months, without any penalty or interest for late payment, for the payment of all their direct taxes and without the need to provide any particular justification:

  - Although the announcement referred to a deferral of payment of "direct taxes", such deferral should more generally apply to all taxes payable by French businesses, including, for example, corporate income tax and wages tax (*taxe sur les salaires*), but with the exception of VAT and similar taxes, the withholding of income tax made by employers on wages paid to their employees (*prélèvement à la source*), and the French tax on insurance contracts (*taxe spéciale sur les conventions d'assurance*).

  - As a matter of example, for all companies, the payment of the corporate income tax installment of March 15 could be delayed until June 15. Companies that have already paid such installment may request its repayment from their tax office.

- Monthly payments of the business real estate contribution (*cotisation foncière des entreprises*, or CFE) or the real estate tax (*taxe foncière*) may be suspended on the French tax authorities website or by contacting the *Centre Prélèvement Service*. The deferred payment amounts will become payable at the same time as the balance payment.

- On April 6, 2020, the French tax authorities published additional measures regarding VAT:

  - Businesses suffering difficulties to prepare their VAT returns because of the crisis context may establish such tax returns on an estimated basis with an accepted rate of mistake of up to 20%.

  - Businesses suffering a decrease of their turnover because of the crisis may declare for the month of March (and the month of April in the case where the urgency sanitary period would be extended) an amount of VAT equal to: (i) by default, 80% of the amount of VAT declared for the month of February, or (ii) if the activity is stopped or highly affected (decrease of at least 50%) since the middle of the month of March, 50% of the amount of VAT declared for the month February. A regularization would take place after the crisis.

  - Paper invoices may be sent to clients by electronic means (*e.g.*, email) without consequences on the right to deduct VAT.

- The French government indicated that tax refunds may be granted to companies facing extreme financial difficulties as a result of the COVID-19 crisis.

  The possibility to benefit from such a tax refund, however, is limited to corporate income tax and related taxes (*i.e.*, CFE and company value added contribution (*cotisation sur la valeur ajoutée des entreprises*, or CVAE)). Such a refund will be granted on a case-by-case basis after an examination of the financial position of the taxpayer concerned showing that the sole deferral in the payment of taxes cannot allow the business to overcome its financial difficulties.

- To ease all these procedures, the French tax authorities have made a form available for businesses on their website (updated on April 2, 2020, to take into account the exclusion of large companies distributing dividends; see explanations below). Such form, once filled in, must be sent to the relevant tax office (SIE) (see "*Documentation utile*" at https://www.impots.gouv.fr/portail/node/9751).

- The French government declared that the refund of all tax credits that must take place in 2020, net of any portion of such tax credits that may be offset against the corporate income tax due in respect of the 2019 fiscal year, will be accelerated. This relates in particular to VAT, R&D (*crédit d'impôt recherche*) and CICE (*crédit d'impôt pour la compétitivité et l'emploi*) credits. In addition, French businesses may obtain a refund of the excess advance corporate income tax instalments paid in respect of the 2019 fiscal year even though the taxable results in respect of such fiscal year have not yet been declared.

- Businesses facing difficulties in the payment of their taxes may directly contact their relevant tax office through the secured message system of their professional space on the French tax authorities website, by email, or by phone.

- Finally, a dedicated committee (*Commission des chefs de services financiers*, or CCSF) may grant, upon request of businesses, additional deferral measures for the payment of taxes and social contributions.

- In practice, the different sanitary measures implemented and the closure of all public places deemed non-essential would lead to the suspension of current tax audits and would prevent the French tax authorities from starting new tax audits during this period, at least for companies in sectors impacted by the COVID-19 crisis.

Social Contributions Measures

Postponed deadlines for the payment of social contributions (*i.e.*, social security and other contributions payable to the URSSAF)

- The French government announced specific measures for employers whose deadline to pay their social contributions to the URSSAF expires on the 15th of each month (the general deadline for companies that employ fewer than 50 employees), and indicated that the March 15 and April 15 deadlines could be postponed up to three months (*i.e.*, respectively until June 15 and July 15, 2020) without any penalty or interest for late payment. The corresponding deferral of payments would concern those that are due by the employers as well as those that the employers levy as part of employee social contributions.

- A similar postponement was announced on March 23, 2020, for employers whose deadline to pay social contributions falls on the 5th of each month. These employers could defer the payment of all or part of the employee and employer social contributions normally due on April 5, 2020. This deadline could be postponed up to three months (*i.e.*, until July 5, 2020), without any penalty. Employers could choose not to pay the full amount of such contributions or to pay only part of them. Filing obligations relating to the nominative social declaration (*déclaration sociale nominative*, or DSN) remaining applicable, such return should be filed no later than April 5 at 11:59 p.m. (Paris time).

- A postponement of the applicable deadlines for the payment of complementary retirement contributions might also be obtained. Employers are invited to contact their complementary retirement institution in this respect.

Exclusion of Large Companies Distributing Dividends From the Benefit of the Tax and Social Contributions Measures

- The French government published a [FAQ document] excluding large companies proceeding to dividend distributions or share buy-backs between March 27, 2020 and December 31, 2020 from the benefit of the tax and social measures described above (except for the possibility for large companies to claim for an early repayment of their tax credits).

- Large companies concerned by this exclusion are either independent companies or a group of several entities which, during the last financial year, (i) employed at least 5,000 employees or (ii) had an annual turnover of at least €1.5 billion, in France.

- Regarding groups:

  - This exclusion covers all the French entities and subsidiaries of the group, even if only some of them benefit from the governmental support.

  - Intra-group distributions remain possible when they ultimately have the effect of providing financial support to a French company (in particular to enable the latter to satisfy contractual commitments vis-à-vis creditors).

  - Distributions made by foreign entities to French entities of the group do not impact the benefit from the tax and social contributions measures.

  - The concept of group used in this respect may be construed by reference to the definition of group applicable for purposes of the *Contribution sur la valeur ajoutée des entreprises* (CVAE) pursuant to Article 1586 *quater*, I *bis* of the French tax code (*Code général des impôts*) or the French tax consolidation regime pursuant to Article 223 A of same code.

- Dividends concerned by the exclusion are those qualifying as such in the strict sense of this term (*i.e.*, distributions which are decided by the annual shareholders meeting, including when the distribution is realized in kind by means of a distribution of shares), but also all other forms of distributions in cash or in shares (including in particular advance dividend payments and exceptional distributions of reserves). However, distributions of shares which are implemented within the frame of a group reorganization are not covered by this exclusion.

- Regarding share buybacks:

  - Share buy-backs covered by the exclusion are those which are realized for purposes of a share capital reduction which is not motivated by accounting losses of the issuing company or which are realized for financial management purposes.

  - Share buybacks remain permitted if they are realized (i) for purposes of distributing shares to employees, (ii) for the fulfilment of a legal commitment taken prior to March 27, 2020 (*e.g.*, in respect of a security giving access to capital), (iii) under liquidity contracts entered into before March 27, 2020 and not subsequently modified, or (iv) within the framework of an external growth operation provided that they are necessary for the implementation of operation and such operation was materialized by a legal commitment prior to March 27, 2020.

In the event of an audit, the company will need to be in a position to provide proof of the reason for which the share buyback was implemented and that the shares so repurchased were actually assigned for the purpose that is claimed.

- The exclusion from the benefit of the tax and social contribution measures applies as from March 27, 2020. As a result, companies that have taken such measures (*i.e.*, to pay dividends or to buy back shares) before March 27, 2020 are not affected by this exclusion.

  The criterion used for this purpose is the date of the decision of the competent body to proceed with the distribution or share buyback (*e.g.*, for a *Société anonyme* such legal body is in principle the shareholders meeting and the board of directors as far as dividend distributions and advance payments of dividends are respectively concerned). If this decision is taken by such legal body before March 27, 2020, the company is entitled (or remains entitled) to benefit from the tax and social contributions measures.

  The fact that the amount of the dividend was announced (*e.g.*, at the time the annual results were published), that the shareholders meeting was convened with an agenda including the vote of the dividend distribution or that the dividend payment date was announced, are irrelevant if the decision by the competent legal body was not taken prior to March 27, 2020.

- Entities which have a legal obligation to distribute dividends are not affected by this exclusion.

- In practice, the commitment not to proceed to dividend distributions or share buyback must be formalized as follows:

  - For deferral of tax payments, the commitment must be taken in the related form that must be filed with the French tax authorities to benefit from such deferral.

  - For deferral of social contributions, the company must commit itself by sending a notice (*e.g.*, by means of an e-mail) to the URSSAF. Regarding groups of companies, the commitment must be sent by the parent company for the entire group, even if the postponement is requested by only one or some companies of the group.

  In the absence of commitment or in the event of failure to comply with such commitment, the company concerned will be subject to penalties applying in the case of non-payment of taxes and social contributions at a 5% rate and interest for late payment at a 0.2% rate per month.

Adjustment of Legal Deadlines

- Because of the crisis, businesses may no longer be in a position to enforce their rights or to avoid sanctions and legal effects attached to the non-performance of certain acts or the non-observance of deadlines to perform legal and tax formalities.

- Accordingly, the French government has been empowered by the Parliament to regulate by means of ordinances the legal, contractual, or jurisdictional deadlines and procedures which, in the present circumstances, cannot be met (emergency laws to deal with the COVID-19 epidemic: *Loi organique d'urgence pour faire face à l'épidémie de COVID-19*, adopted on March 21, 2020, and *Loi d'urgence pour faire face à l'épidémie de COVID-19*, adopted on March 22, 2020). This moratorium shall have a retroactive effect as of March 12, 2020, though the extension of such deadlines may not exceed three months following the expiration of the containment measures taken in the context of the COVID-19 crisis.

- On March 25, 2020, the French government enacted an ordinance (*Ordonnance n° 2020-306 du 25 mars 2020 relative à la prorogation des délais échus pendant la période d'urgence sanitaire et à l'adaptation des procédures pendant cette même période*) in order to extend statutes of limitations applicable in particular to tax audits. Statutes of limitations that expire on December 31, 2020, will be extended for a period equal to the period lasting between March 12, 2020, and one month after the expiration of the containment measures. The ordinance also extends for the same period the deadlines under which taxpayers and the French tax authorities can act under tax audits and tax ruling procedures. Additionally, the due dates for debts owed to the French Treasury have been extended for a period expiring the second month following the end of the crisis.

- On April 3, 2020, the French tax authorities have published comments on these measures (BOI-DJC-COVID19 et seq.). Although subject to public comments until April 13, 2020, these comments are binding the French tax authorities since the date of their publication and until their further modification, if any. Deadlines for filing tax returns are at this stage not modified and remain applicable for all taxpayers, subject however to certain exceptions. In this last respect, the deadline for reporting the taxable results of companies that have closed their fiscal year on December 31, 2019 is extended from May 20, 2020 to May 31, 2020.

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