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4 MAY 2020

FISCAL RESPONSES TO COVID-19

As countries ramp up social distancing measures to combat COVID-19, the economic costs of the virus spiral and the 7 leaders have called on their central banks and finance ministers to take action to support economic and financial stability. **In addition to cutting interest rates, introducing tax breaks or delaying tax collection are some of the measures available to help the economy. This briefing profiles some of the fiscal measures that have been announced or implemented in Germany, France, Italy, the Netherlands, Portugal, Spain and the UK.**

GERMANY

"There is enough money available to tackle the crisis and we will use it now. We will take all necessary measures. That is something everyone can rely on."

The German government has published a package of measures to mitigate the impact of COVID-19. These measures include more flexible regulations regarding compensation for reduced hours, strengthening European coherence, a protective shield worth billions of euros for businesses and, last but not least, tax-related liquidity assistance.

Taxpayers, who can demonstrate that they are directly and not immaterially affected by COVID-19, can apply for the following tax-related measures:

- Reduction of tax prepayments: The taxpayers may apply for a reduction of their prepayments of income and corporate income tax as well as trade tax until 31 December 2020 if making the prepayments in full would cause significant hardship and the German tax authorities have been instructed not to impose strict conditions in respect of the reduction. Additionally, certain advance payments for VAT can be requested to be reduced to zero and/or reimbursed.
- Deferral of payments: The German tax authorities will not apply the normal strict requirements when granting a deferral of the due date for tax payments until 31 December 2020, and interest on such deferred payments may be waived. Taxpayers still need to set out why they apply for deferral, but applications will not be rejected because taxpayers are unable to provide detailed prove of the damages that would otherwise arise. The deferral applies to (corporate) income tax, solidarity surcharge, church taxes (if any), trade taxes and VAT.
- Waiver of enforcement measures and late-payment surcharges: No enforcement measures will be taken until 31 December 2020 if the taxpayer is directly and not insignificantly affected. Late-payment surcharges will be waived for the period from 19 March 2020 to 31 December 2020.
- Economic Stabilisation Fund ("Fund") to aid companies: A participation by the Fund in a company requesting to receive aid is exempt from real estate transfer taxes and from the forfeiture of its loss carry forwards irrespective of the change-in-ownership. Payments by the corporation to the Fund are not subject to withholding taxes.
- Retroactive effect of reorganisation measures: Certain reorganisation measures can now retroactively be implemented for a period of up to 12 months instead of 8 months for corporate and tax purposes.

- Tax exemption for employer allowances: Payments made to employees between 1 March and 31 December 2020 in addition to their salaries are tax-exempt in an amount of up to EUR 1,500.

The German tax authorities have already promised to implement these measures in a taxpayer-friendly way. It is also expected that further tax-related liquidity support will be provided by the German government.

FRANCE

The French Government has implemented a set of exceptional tax measures mainly consisting in a postponement and waiver of certain tax payments (1), an early reimbursement of certain tax credits (2), an adaptation of the rules governing the tax deduction of waivers of certain rents (3) and an extension or suspension of certain deadlines and statutes of limitations applicable to tax matters (4).

1. Postponement and waiver of certain tax payments

These measures, which are described on the French Treasury's website which also provides a link to the form to be used to request them, consist of:

- a postponement for three months, upon request by the taxpayers facing financial difficulties as a result of the Covid-19 crisis (without incurring a tax penalty), of the payment of their direct corporate taxes, being mainly corporate income tax and business taxes (but excluding individual income tax levied at source, registration duties and indirect taxes such as VAT). The taxpayers having already paid the eligible taxes may ask for a reimbursement in order to benefit from the three-month postponement[1];
- a waiver of direct taxes for taxpayers experiencing proven financial difficulties that cannot be mitigated by the postponement mechanism described above.

Specific condition to be met by large companies. In order to benefit from these measures, "large companies" (or the group to which they belong) must undertake to neither pay dividends nor buy back shares in 2020. If the undertaking is breached, the benefit of the tax measures would be withdrawn, and penalties and interest charged.

Cut-off date: 27 March 2020

Subject to certain exceptions, any decision to pay dividends or buy back shares, if taken on or after 27 March 2020, would deprive the company of the benefit of the aforementioned favourable tax measures (triggering the payment of tax penalties if the company has already benefited from these measures).

According to the information currently available, and subject to official confirmation, companies having benefited from the favourable measures prior to 27 March 2020 could fall

[1] The FTA extended this postponement mechanism to the eligible tax payments falling due in April and May 2020 (the payments falling due as from June 2020 would therefore not be concerned unless another extension of this measure is expressly provided by the FTA).

outside the scope of such restrictions and could proceed with the payment of dividends and/or the buy-back of shares without any challenge of the favourable measures applied to them in the past. Such dividend payment or share buy-back would, however, make them ineligible to benefit from the favourable measures in the future.

Which companies are "large"?

“Large companies” are defined as companies, or groups of companies having, in respect of the preceding fiscal year, at least 5,000 employees or a consolidated turnover exceeding €1.5bn in France.

These thresholds would be assessed at the level of the relevant company or, if the company belongs to a group, at the group level on a consolidated basis. In defining a “group”, the current guidelines seem to refer only to a minimum 95% shareholding (and not to a more stringent criterion defining control). This question is key and would need to be further clarified by the tax authorities.

If the company benefitting from the favourable tax measures belongs to a group, all French companies within the group must comply with the commitment, even if not all of them benefit from the favourable tax measures. In practice, the commitment must be given by the parent company on behalf of the group (and also, in our view, by the company requesting the benefit of the favourable tax measure).

Returns of value subject to the restriction

All dividend payments, including interim dividends and distributions of reserves (whether in cash or in shares), and share buy-backs implemented as a result of a share capital reduction not justified by losses (including through a reduction of the nominal value of the shares) would fall within the scope of this restriction.

By way of exception, the following would not be subject to the restriction:

- any such operation which was decided before 27 March 2020, even though the payment/implementation actually occurs after this date;
- any dividend payment which is compulsory under applicable law, provided that the amount distributed is strictly limited to what is required by the legal obligation
- intragroup distributions if “*their final effect is to provide financial support to a French company (notably to enable it to pay its creditors)*” (dividends paid by foreign subsidiaries to French companies would also be allowed);
- share buy-backs implemented in order to grant shares to employees;
- share buy-backs pursuant to liquidity agreements entered into before 27 March 2020 and not amended since then;
- share allocations implemented in connection with a group reorganisation

- share buy-backs made in the context of an external growth operation provided that they are necessary and that the external growth operation results from a commitment prior to 27 March 2020.

Consequences of breach

If the required undertaking is not given, or if the undertaking is breached, deferred tax payments are due immediately, with an initial 5% late payment penalty, plus late payment interest at a rate of 0.2% per month. This late payment interest will be computed as of the original due date of the instalments for which the time-limits for payment had been extended or for which the waiver had been granted.

2. Early reimbursement of certain tax credits

French companies may also request early reimbursement of some of their tax credits for which the reimbursement deadline is in 2020 (subject to filing requirements, and notably the filing of the form computing the balance of corporate income tax due in respect of 2019). The French Treasury has also provided for an acceleration of the reimbursement process for other tax credit, such as VAT refunds.

3. Tax deduction of waivers of certain rents

Pursuant to the Amended Finance Act 2 dated April 25 2020 , has been taken a measure whose purpose is to ease the tax deduction of waivers of rents granted by a landlord to an enterprise between April 15 2020 and December 31 2020, provided that the lessor and the lessee are not related parties[2].

4. Extension and suspension of certain deadlines and statutes of limitation

Additional temporary measures have been implemented by the French Government regarding deadlines and statutes of limitations applicable to tax matters during the state of public health emergency. Subject to certain conditions:

- certain deadlines applicable to taxpayers that intend to bring an action before competent tax courts have been extended;
- the statutes of limitation for tax audits and for the recovery of taxes by the French tax authorities have been suspended;
- certain deadlines applicable to taxpayers and the French tax authorities in the context of tax audits and tax rulings have been suspended

[2] Related parties may exist notably (i) when a party holds directly or indirectly the majority of the share capital of the other or holds *de facto* the decision making power in respect of the other or (ii) when both parties are controlled, within the meaning of limb (i), by a same other party. In respect of CIT, this measure applies to FYs closed as from April 15, 2020.

These measures explain why the French Treasury has decided that, during the COVID-19 crisis, no new tax audits will be started and current tax audits will, in practice, be suspended (unless otherwise agreed with the taxpayer).

It is, however, expressly provided that time limits for the filing of tax returns are not impacted by these measures; tax returns must be filed in accordance with the time limits given by the normal rules unless otherwise expressly decided by the French tax authorities (to date, the French Treasury notably decided to postpone the deadline to file the CIT returns to June 30 2020 for companies having closed their fiscal year on 31 December 2019)[3].

[3] This extension also covers the filing of certain business tax returns and the balance of CIT and, in some cases for business tax, for FY 2019. This extension to June 30 2020 would also apply to the option to set up a tax consolidated group (in the absence of clear-cut official confirmation from the FTA in that respect and given the importance of this deadline, this point could be checked on a case by case basis with the FTA). At this stage, a prudent approach would be to consider that the payment deadline extension to June 30 2020 – which is in theory different from the postponement mechanism described above – would be subject to the commitment referred to above (when applicable) and would be only applicable to the taxpayers facing financial difficulties as a result of the Covid-19 crisis.

ITALY

FINANCIAL MEASURES ISSUED BY THE GOVERNMENT

On 8 April 2020, the Italian Government enacted Law Decree no. 23 of 2020 (the "Restore Liquidity" Decree). Together with Law Decree no. 18 of 17 March 2020 (the "Care for Italy" Decree), it provides businesses affected by the coronavirus pandemic with a package of financial assistance.

1. The package of the tax measures in force during the lockdown

The main tax measures of the two Decrees include:

- the possibility to transform into a tax credit a portion of deferred tax assets relating to tax losses and allowance for corporate equity, for an amount proportional to the value of the non-performing loans that are sold to third parties;
- the payments of VAT, social security contributions and employers' withholding taxes due in April 2020 and May 2020 have been suspended for qualifying enterprises. The suspended payments can be fulfilled in a single instalment by 30 June 2020 or in up to 5 equal monthly instalments starting from June 2020. Qualifying enterprises are enterprises having their tax domicile, legal seat or operational seat in Italy, which:
  - for enterprises with revenues not exceeding EUR 50 million in fiscal year 2019, suffered a reduction of their turnover of at least 33% in March 2020 and April 2020, when compared to the same months in 2019;
  - for enterprises with revenues exceeding EUR 50 million in fiscal year 2019, suffered a reduction of their turnover of at least 50% in March 2020 and April 2020, when compared to the same months in 2019; and
  - for enterprises which have their tax domicile, legal seat or operational seat in certain provinces of Northern Italy (Bergamo, Brescia, Cremona, Lodi and Piacenza), if they suffered a reduction of their turnover of at least 33% in March 2020 and April 2020, when compared to the same months in 2019 (only for VAT payments);
- suspension of the withholding tax on fees and commissions derived between 17 March 2020 and 31 May 2020 by self-employed taxpayers which have their tax domicile, legal seat or operational seat in Italy and had revenues not exceeding EUR 400,000 in fiscal year 2019, provided that, in the previous month, they did not incur any employment costs;
- underpayments of advance instalments of IRPEF, IRES and IRAP will not trigger any penalties or interest, provided that the difference between the payment and the amount due is not more than 20 percent;

- the deadlines for the payments of stamp duties on electronic invoices have been deferred to:
  - 20 July 2020, in the case of stamp duty for the first quarter of 2020, amounting to less than EUR 250;
  - 20 October 2020, in the case of stamp duty for the first and second quarters of 2020, totalling less than EUR 250.
- the tax credit (for 50% of the expenses, up to maximum of EUR 20,000) for sanitization costs has been extended to include the costs of purchasing and installing other safety equipment to protect workers from accidental exposure to biological agents or to ensure that people are at a safe distance from one another, and the costs of hand cleansers and disinfectants; and
- the suspension of tax litigation deadlines and activities have been extended from 15 April 2020 to 11 May 2020.

2. "Phase 2": the measures that will be in force after the lockdown

Italy, which has declared more coronavirus deaths than any other European country, has imposed quarantine throughout the entire national territory on 10 March 2020 (with some badly hit northern regions imposing lockdowns even earlier). The lockdown period, which has since been extended twice, is due to expire on May 3.

On 24 April 2020 the Government made an official announcement about the next stage of lockdown (DEF 2020). The Government will request the Parliament to authorize additional loan for the year 2020 of EUR 55 billion, EUR 24.85 billion in 2021, EUR 32.75 billion in 2022, EUR 33.05 in 2023, EUR 33.15 billion in 2024, EUR 33.25 billion from 2025 to 2031 and 29.2 EUR billion from 2032.

Through the additional resources, the Government intends to implement, among others, measures to preserve employment levels and income, the competitiveness in international markets, with interventions for the capitalization of companies. The next government decree will ensure that the increase in VAT rates and excise duties expected from 2021 will not enter into force.

NETHERLANDS

Businesses that experience liquidity constraints as a result of COVID-19 are entitled to an extension for the payment of taxes, including corporate income tax, VAT, wage tax and social security levies. The extension is unconditional and applies for a period of three months.

Additional extensions may be granted, subject to the submission of a statement from a third party such as an accounting firm, confirming that it is plausible that the financial difficulties are predominantly due to the COVID-19 crisis.

Late payment interest has been reduced to 0.1% (from 8% for corporate income tax and 4% for all other taxes) and no administrative penalties will be imposed for the late payment of taxes.

The measures are part of a broader emergency package that was announced by the Dutch government on 17 March 2020 and which includes subsidies for up to 90% of wages for businesses that experience a decrease in turnover of more than 20% as a result of COVID-19, income support for free lancers and extensive credit support for a range of businesses and sectors.

The government is studying further measures that could help employers to keep jobs open, including a temporary amendment to the rules on carry back and carry forward of net operating losses (currently one and six years, respectively).

PORTUGAL

In the context of the public health emergency resulting from the spread of the new Coronavirus - COVID-19 - in Portugal and the State of Emergency declared on 18 March (and renewed on 2 April and 17 April), the following measures have been introduced at the level of taxation and social security contributions, employment and credit to mitigate the negative economic impact of COVID-19 on companies and individuals:

- Postponement of deadlines for the payment Corporate Income Tax ("CIT") for 2019 and the advance payments for 2020 regarding the first quarter of 2020;
- Postponement of deadlines for the payment of withholdings at source and Stamp Tax;
- Deferrals of the payment of Value Added Tax and Personal Income Tax and CIT withholdings due in the months of April, May and June, allowing that some companies (with a turnover of € 10 million or less in 2018, a declining turnover of at least 20% in relation to the same period last year, activity in the closed sectors due to the State of Emergency or which have commenced (or restarted) their business activity as of 1 January 2019) to pay the respective tax in three or six instalments without accruing interest or having to secure this payment;
- Deferrals of the payment of Social Security contributions by the employer regarding the months of March, April and May, which allow that some companies (e.g., all companies up to 50 employees, companies with 50-249 employees if they have a declining turnover of at least 20%, companies with 250 employees or more if they have the same declining turnover and the respective activity is in the closed sectors due to the State of Emergency or the aviation or tourism sectors) to pay 2/3 of the contributions in three or six instalments without accruing interest from June onwards;
- Lay-off measures which allow for the employers in special distress (in closed sectors of the economy or with a decline in turnover of at least 40%) to suspend the employment agreements or reduce normal working hours of their employees and temporarily reduce the income of the employees to 2/3, with a subsidy of 70% of the salaries paid up to a maximum of three months;
- Credit lines to assist the Portuguese companies with their cash-flow management in the coming months;
- Suspension of all proceedings and procedural acts until the end of the exceptional situation has been declared by the Portuguese Government, including all tax proceedings in judicial and arbitral courts and with the Portuguese Tax Authorities, as well as tax infraction and enforcement proceedings.

SPAIN

"Ensuring liquidity in the economy"

Spain has declared a state of emergency until 10 May 2020, but it is envisaged that it will be extended at least until end of May. One of the government's main concerns is to ensure liquidity in the economy after this time of very limited business activity. In this regard, several tax measures have been approved in the past few days.

Companies with a trading volume of approx. €6m or less in tax year 2019 may defer the payment of tax debts owed to the State of up to €30,000, payable pursuant to tax returns and self-assessments that must be filed and paid between 13 March 2020 and 30 May 2020 (inclusive). This deferment will be granted without requiring guarantees.

Whilst several amendments to time periods have been made during the state of emergency, it is important to bear in mind that, generally, **the deadlines for submitting tax forms are not affected by these changes and the taxpayers must, therefore, continue to submit their tax forms and pay any tax due in accordance with the applicable deadlines**. The following changes to time periods are relevant to tax:

- Terms and deadlines of legal proceedings before the administrative courts (*jurisdicción contencioso-administrativa*) have been suspended.
- The statute of limitation (*prescripción*) and expiry (*caducidad*) periods for tax purposes has been suspended from 18 March 2020 until 30 May 2020 (originally, the suspension period was intended to end on 30 April but it has now been extended).
- The time limit for payments due as a result of tax assessments has been extended, including in respect of payments which are already in their enforcement period (*periodo ejecutivo*) and those which are due under deferment or split payment resolutions.
- The time period to reply to requests, seizure orders and to submit statements in different tax proceedings has also been extended, but this does not affect the time limit for submitting statements in economic-administrative proceedings.
- The period from 18 March 2020 to 30 May 2020 (originally, the suspension period was intended to end on 30 April but it has now been extended) will not be taken into account for the purposes of computing the maximum time period in which the State tax authorities must end proceedings (i.e. tax inspections or tax penalty proceedings).
- The time period for filing economic-administrative and administrative appeals will not be initiated between 18 March 2020 and 30 May 2020 (originally, the suspension period was intended to end on 30 April but it has now been extended).
- The time limit for replying to requests by the Cadastral General Directorate has also been extended.

Notwithstanding the above, taxpayers with an annual turnover of less than EUR 600,000 in 2019 have been granted a deferral in relation to the filing and payment of returns-assessments or self-assessments which deadline for submission ends between 15 April and 20 May (both inclusive) until 20 May 2020. The deferral applies to federal taxes, such as Corporate Income Tax, VAT and Personal Income Tax. The deadline to file tax returns which are paid by direct debit has also been extended from 15 April to 15 May 2020. This measure is not available to taxpayers filing tax returns on a consolidated group basis, as it refers to CIT and VAT, respectively. It is also not applicable to customs assessments.

Furthermore, companies with turnover not exceeding EUR 6,000,000 in 2019 can change the method to determine the CIT payment on account in the next CIT payment on account self-assessment to be filed. In other words, companies will be able to opt for calculating the CIT payment on account according to the current year base method regardless they had not opted for this method in due course. The measure does not apply to tax groups in CIT or VAT, regardless of their turnover.

On a separate issue, VAT tax rates applicable to several healthcare materials purchased by public entities, hospitals or private entities of a social nature has been reduced to 0% from 23 April 2020 to 31 July 2020. In the same way, VAT rate applicable to digital newspapers, magazines and books has been reduced to 4%.

In addition to the above measures, certain Autonomous Regions and different towns have approved certain measures with regards to the terms and deadlines of the taxes which they manage, and reductions in such taxes. For instance, the Madrid City Council has approved:

- a 25% reduction in Real Estate Tax for real estate assets dedicated to commercial, leisure or hospitality, if employees are retained
- a 25% reduction in Business Activities Tax for taxable persons in the leisure, hospitality or tourism industries or running commercial or department stores, if employees are retained
- a deferral of payment in respect of other local taxes

An exemption from Stamp Duty on public deeds which record a novation of mortgages or credit facilities has been approved, in accordance with Royal Decree-Law 8/2020.

UK

"We will do whatever it takes"

For all UK businesses, VAT payments will be deferred for 3 months; this deferral applies from 20 March 2020 until 30 June 2020. As discussed on the European Tax Blog, the UK's tax authorities have also issued guidance in respect of the impact of travel restrictions on the creation of permanent establishments in the UK and UK tax residence.

To ease the burden on small businesses, measures were announced to ensure that, temporarily, no business rates (periodic property taxes charged by reference to a property's value) would have to be paid in respect of nearly half of all business properties. In addition, certain pubs still subject to business rates would benefit from a temporary £5,000 discount. The UK's tax authorities have also set up a dedicated helpline for affected businesses to discuss, for example, a potential deferral of their tax liabilities.

Further details on these and other measures to support businesses, including on the provision of certain government-guaranteed funding and on the Coronavirus Job Retention Scheme and the Coronavirus Statutory Sick Pay Rebate Scheme pursuant to which the UK's tax authorities will reimburse respectively 80% of designated workers' wage costs, up to a cap of £2,500 per month, and two weeks' sick pay if an employee is unable to work because they have COVID-19 or are self-isolating, are available on a regularly updated government website.

Employees forced to work from home may be able to claim a flat rate income tax deduction in respect of their expenses. This deduction is available in respect of temporary arrangements, such as those put in place in response to COVID-19.

Freelancers would have been pleased by an announcement that the controversial IR35 reforms (meaning, broadly, that certain freelancers would be treated as employees for tax purposes) have been postponed. The UK government has also put in place measures which effectively extend the Coronavirus Job Retention Scheme to the self-employed.

Certain changes to tax administrative processes have also been made. Taxpayers, wishing to pay stamp duty on a transfer of shares, are told to submit a copy of the instrument of transfer by email to the UK's tax authorities (normally, the original would have to be submitted by post so that a stamp may be physically affixed to it). Certain clearance applications should also now be submitted by email rather than by post and all proceedings before the UK's tax court of first instance have been stayed until 21 April 2020. Appeals from decisions made by this court are, however, scheduled to proceed via video link.

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