

## BELGIAN TAX, EMPLOYMENT AND SOCIAL SECURITY SUPPORT MEASURES FOR ENTERPRISES IMPACTED BY THE CORONAVIRUS CRISIS.

Following the outbreak of the COVID-19 crisis, the Belgian economy has been strongly affected by the pandemic and the far-reaching strict containment measures enacted by the Belgian federal government in relation to it. The Belgian federal and regional governments have published various measures to help mitigate the economic effects of the COVID-19 crisis, including several key tax, employment and social security measures.

### 1. DEFERRED PAYMENT OF FEDERAL TAXES

The payment deadline for federal income taxes (corporate income tax, personal income tax, legal entities' income tax and non-resident income tax) has been extended by two months. Consequently, Belgian resident companies, individuals, legal entities not subject to corporate income tax, and non-resident taxpayers are all allowed to pay their income tax liability for tax assessment year 2019, assessed as from 12 March 2020, within a period of four months instead of the ordinary two-month period. This tax payment deferral is available to all taxpayers without any specific conditions attached to it.

A similar automatic and unconditional two-month deferral applies for the payment of VAT and wage withholding tax.

Please note that the federal government has also extended the tax return filing deadlines (for corporate income tax, legal entities tax and non-resident corporate income tax) to 30 April 2020 (for the returns that were to be filed as from 16 March 2020).

Additional deferral measures are applicable to the payment of certain federal taxes, subject to the fulfilment of certain conditions.

These measures apply to enterprises (companies or individuals) who meet the following conditions:

- the entity/individual must have a Belgian registration number issued by the Crossroad Bank for Enterprises; the sector of activity of the enterprise is irrelevant;
- the enterprise must submit a specific form, including a detailed justification for its request (i.e., details of the impact of the COVID-19 crisis on its

#### Key issues

- Deferral of payment of federal taxes
- Postponement of deadline for filing tax returns
- Temporary freeze of certain regional taxes
- EU commission proposal for a State aid Temporary Framework
- Tax procedural measures
- Employment measures
- Social security measures

activities (decline of turnover, decrease of orders, chain-effect due to business partners suspending payments or orders, etc.);

- the relevant payment notice (e.g., *avertissement-extrait de role / aanslagbiljet* or any other payment request) issued by the Belgian federal tax authorities;
- the enterprise must still comply with its tax filing obligations;
- the enterprise must not be subject to collective insolvency proceedings (e.g. bankruptcy, judicial reorganisation, etc.); and
- it is not available to tax debts resulting from any fraud.

If the above conditions are met, the enterprise may request payment facilities for one or more of the following taxes: (i) corporate income tax, (ii) legal entities income tax, (iii) VAT, (iv) professional withholding tax, and (v) personal income tax. If granted, the payment facilities will also avoid any late payment interest and fines for the taxes concerned.

To obtain the payment facilities, the enterprise must send its request, together with the supporting documents, by e-mail or postal mail to the competent *Centre régional de recouvrement / Regionaal invorderingscentrum* on or before 30 June 2020.

These measures may be terminated if the taxpayer does not follow the payment instalment plan agreed with the tax administration, or in case of collective insolvency proceedings (e.g., bankruptcy, judicial reorganisation, etc.).

## 2. POSTPONEMENT OF VAT RETURNS FILINGS AND VAT PAYMENTS

### Periodic VAT returns

	Normal deadline	Extended deadline
Return for February 2020	20 March 2020	6 April 2020
Return for March 2020	20 April 2020	7 May 2020
Return for the first quarter of 2020	20 April 2020	7 May 2020

Starting companies qualifying for a monthly refund, or holders of a licence for a monthly refund, are also granted a deferred deadline, but only until the 24<sup>th</sup> of the month following the filing period.

### EU sales listing

	Normal deadline	Extended deadline
Statement for February 2020	20 March 2020	6 April 2020
Statement for March 2020	20 April 2020	7 May 2020
Statement for the first quarter of 2020	20 April 2020	7 May 2020

### Annual customer listing

Where the normal deadline is 31 March 2020, the deadline has been extended until 30 April 2020. If the taxpayer has ceased its activities, the deadline is, at

the latest, at the end of the fourth month following the cessation of its activities subject to VAT.

## **VAT payments**

The deadline for paying VAT due is automatically postponed by two months (and no late payment interest or penalties will accrue). Hence, the payment deadline for VAT in relation to March 2020 is deferred to 20 June 2020.

In addition to this automatic deferral, qualifying enterprises can still apply for the conditional deferral measures mentioned above

## **3. TAX CONSEQUENCES ON DEBT RESTRUCTURINGS**

### **Impact of the new EBITDA rule**

In order to mitigate the effect of the COVID-19 crisis, Belgian resident companies, and foreign companies that are permanently established in Belgium, may seek to undertake refinancing operations in relation to their existing debt.

However, such refinancing operations may have the unforeseen consequence to subject the financing to the application of new interest deduction limitation rules (the so-called "**30% EBITDA test**") instead of the old 5:1 debt-to-equity ratio (to the extent that the historic financing was concluded before 17 June 2016 and not substantially modified since then).

In application of the 30% EBITDA test, Belgian companies and Belgian permanent establishments of foreign companies may only deduct exceeding interest charges (and other assimilated borrowing costs) up to 30% of their tax-adjusted EBITDA (computed on a consolidated basis, taking into account all the Belgian companies and Belgian establishments subject to this rule that are related to each other) or EUR 3 million (this *de minimis* threshold is also to be allocated between all related Belgian entities).

One must also take into account the fact that one-off bank fees relating to debt refinancing may cause a temporary surge of exceeding borrowing costs, possibly resulting in a portion of the financial expenses to turn out to be non-deductible (and to be carried forward to future years).

## **4. TAX RULING ON HOMEWORKING ALLOWANCES**

Indemnities granted by an employer to its Belgian resident employees qualify, in principle, as ordinary remuneration, subject to the progressive rates of Belgian personal income tax (application of article 31, al. 2, 2° BITC).

However, the Belgian Federal Tax Ruling Commission has published a draft ruling, pursuant to which any employer may request that a compensation of up to EUR 126.94 per month may be exempted of personal income tax for its Belgian employees, to the extent that they are working from home. This sum represents the expenses that are incurred by the employees in relation to home working.

However, the ruling request remains subject to approval by the Belgian Federal Tax Ruling Commission on a case-by-case basis.

## **5. REGIONAL TAX MEASURES**

### **Flemish region tax measures**

The Flemish region has announced that a payment notice in relation to real estate withholding tax will be sent to enterprises (legal entities) in September 2020, instead of early summer 2020. Consequently, the enterprises concerned should have until November 2020 to pay the real estate withholding tax that is due for 2020.

In addition, the Flemish region has announced an automatic extension of two months (calculated as from the expiry of the reinforced isolation measures imposed by the Belgian federal government) for the performance of certain tax formalities (registration of notary deeds for the transfer of real estate assets, etc.) and the related payment of taxes or duties.

### **Walloon region tax measures**

The Walloon region has announced several measures with respect to regional taxes. These measures include, notably:

- an extension of certain deadlines for tax returns and tax payments;
- an extension of certain deadlines applicable in tax litigations;
- freeze of negative tax decisions;
- payment plans; and
- more flexible tax recovery procedures.

### **Brussels Region tax measures**

The Brussels Region has announced that it will not claim the tax ("City tax") normally levied on hotel rooms occupancy by tourists, for the first semester of 2020.

## **6. EUROPEAN TAX MEASURES**

### **Temporary Framework for State aid**

On 19 March 2020, the EU Commission consulted its Member States (including the UK) on its draft proposal for a State aid Temporary Framework to facilitate supporting measures taken by the Member States (notwithstanding the general State aid prohibition enshrined in the EU Treaties).

If this proposal goes forward, certain measures taken by Member States will not constitute (normally prohibited) State aid measures, including:

- generally applicable measures (i.e., measures available to any enterprise in a given country (for example, a general suspension of payment of corporate income tax));
- financial support directly addressed to consumers or certain public services (for example, reimbursing specific costs supported by consumers); and
- participation in private sector operations (for example, States will be allowed to acquire participations in private companies or to grant them credit facilities).

In addition, the Temporary Framework will enable certain other types of State aid measures (requiring the prior approval of the EU commission, which should be granted (or refused) in a matter of days), which will include:

- direct grants and selective tax advantages (allowing Member States to grant up to €800,000 to individual companies to address their urgent liquidity needs);
- State guarantees for loans taken by companies from banks;
- subsidised public loans to companies; and
- safeguards for banks that channel support to the real economy.

The draft proposal specifies that all the above measures can be applied to the benefit of companies that have encountered difficulties after 31 December 2019 (with a view to ensure that the Temporary Framework is not used for taxpayer support unrelated to the COVID-19 outbreak).

## **7. TAX PROCEDURAL MEASURES**

### **Visits to professional premises by the Belgian tax authorities**

The Federal Public Services Finance has stated that no visits by the Belgian tax authorities to the business premises of a taxpayer will be conducted. The sole exception shall be with regard to the protection and the safeguarding of the Belgian treasury's interest.

### **Contact with the Belgian Federal tax authorities**

The Federal Public Services Finance has announced that its office will be closed to the public, but that its services will remain available by phone or email.

## **8. EMPLOYMENT LAW MEASURES**

### **Temporary unemployment due to *force majeure***

A flexible application of the concept of *force majeure* has been accepted: all situations of temporary unemployment caused by the coronavirus outbreak are considered as temporary unemployment due to *force majeure*. All employers who are temporarily unable to employ their employees due to the corona crisis can, therefore, rely on this regime. The company does not have to be completely closed down; some employees may be temporarily unemployed and others may not. It is also possible to alternate days of unemployment and working days.

During such period of unemployment, employment contracts are suspended, but employees are eligible to receive a (capped) State allowance paid by the National Employment Office ("**ONEm/RVA**"). The allowance amounts to 70% of the employee's average wage, capped at €2,754.76 per month. On top of the unemployment benefit, the employee receives a supplement of €5.63 per day, also payable by the **ONEm/RVA**.

The company is required to fill in an application form on the online social security portal ("**DRS scénario 5**").

The above measure has been in force since 13 March 2020 and will be in place for the duration of the containment measures taken by the Belgian federal government. Recognition of temporary unemployment due to *force majeure* occurs within three to four days.

If an employee has not been placed in quarantine, but is requested by the employer not to come to the workplace as a preventive measure, there is, in principle, no suspension of the employment contract. The employee still

remains entitled to his/her full salary and should be offered the possibility to continue working, e.g. through teleworking or home working. However, if working remotely is required for sanitary reasons but it is not possible to implement it due to the nature of the employee's tasks, temporary unemployment due to *force majeure* could be used.

### **Temporary unemployment for economic reasons**

Companies that, despite the corona crisis, are still able to employ their employees, but are facing a decrease in their business, customers' orders or revenues, can invoke temporary unemployment for economic reasons.

In a similar manner to the above regime of temporary unemployment due to *force majeure*, employment contracts are suspended, but employees are eligible to a (capped) State allowance paid by the National Employment Office.

Conditions and duration vary, depending on the category of personnel: blue-collar *versus* white-collar.

On 18 March 2020, national collective bargaining agreement no.147 was adopted in order to facilitate access to such regime for white-collar employees. On that basis, companies no longer need to have a company CBA or a company plan in place to make use of the regime. This national collective bargaining agreement no.147 is valid until 30 June 2020, but an extension is possible.

### **Suspension of ongoing social elections**

The social election procedure, which is ongoing in Belgium in all companies that are required to set up employees' representation bodies, will be suspended. The suspension has effect as of the so-called "Day X+36" (i.e. just after the unions have disclosed their lists of candidates). Any electoral acts currently in progress should be continued until "Day X+35" and, on a date to be determined (probably after the summer), the procedure will be resumed from "Day X+36". The reason for such suspension is that the current situation does not allow the proper conduct of social elections within companies. Further legislative developments are expected soon.

## **9. SOCIAL SECURITY MEASURES**

### **Deferral of payment of social security contributions**

Employers in the hospitality industry (including pubs and restaurants), leisure, culture, festivities and sports sectors, as well as those commercial establishments and shops affected by compulsory closure, are automatically entitled to the deferred payment of all social security payments that are due as from 20 March 2020. As a result, these social security payments can be made until 15 December 2020.

Employers that are closed (i) because they are unable to comply with the sanitary measures or (ii) for other compelling reasons (e.g. closure of their own suppliers or customers), may be granted the same deferral of payment of social security contributions on the basis of a prior statement of honour provided on the online social security portal. The concept of "closure" is here interpreted to mean that the company has stopped its sales and production activities; this does not prevent the employer from having a reduced number of employees on site for security or administrative duties.

## **Payment plans for social security contributions**

Employers experiencing payment difficulties as a result of the pandemic may be granted a payment plan with respect to social security contributions for the first and second quarters of 2020, thereby enabling them to spread payments over a maximum of 24 months and to be exempted from interest and fines that would normally be payable in respect of late payments. In order to benefit from this plan, the company is required to fill in an application form provided on the online social security portal.

Finally, it should be mentioned that several social security supporting measures have also been adopted to benefit self-employed workers.

## **What's next?**

As the COVID-19 pandemic evolves in Belgium and abroad, the Belgian federal and regional governments may adjust the measures already announced and/or implement additional tax, employment or social security supporting measures. We will aim to update the information provided above on a regular basis and keep you informed about any developments. Should you wish to discuss any of the above-mentioned measures, please do not hesitate to contact the relevant person identified on the next page.

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