

March 27, 2020

CORONAVIRUS: EU ECONOMIC AND FISCAL MEASURES

To Our Clients and Friends:

The coronavirus (“**COVID-19**”) pandemic is having a deep impact on businesses across all sectors.

While the primary focus of many businesses will be on ensuring the health and wellbeing of staff, businesses are facing an increasing number of challenges that need to be addressed and mitigated.

Governments of many EU Member States – as well as the European Commission - have announced special measures to support businesses affected by the COVID-19 pandemic. This client alert identifies some of the key fiscal measures being put in place by the governments of the UK, France and Germany to help companies manage their cash flows during these times.

Of course, the tax implications for businesses will go much further than the measures currently being put in place. In these exceptional times, people will be stuck not just in their home jurisdiction but literally at home when they would otherwise be conducting activity in another jurisdiction. The physical location of people is a critical factor in determining where tax should be paid for cross-border businesses and affects transfer pricing, corporate residence, individual residence and more. If you have specific concerns in this regard, please contact the Gibson Dunn contacts at the end of this alert.

For measures being put in place in the United States, please [click here](#).

For a discussion of UK government measures to provide financial support for businesses through purchases of commercial paper and lending to SMEs, please [click here](#).

For a discussion on the European Commission’s initiatives to support the economy amid the COVID-19 pandemic (including a discussion on State Aid), please [click here](#).

If the COVID-19 related tax measures of another jurisdiction are relevant to your business and you require further information, please reach out to the Gibson Dunn contacts at the end of this alert, or your usual Gibson Dunn contact, and we will be delighted to assist.

This client alert is correct as at 27 March 2020.

UNITED KINGDOM

1. VAT PAYMENT DEFERRAL

- VAT payments (other than VAT MOSS payments) due to HMRC in the period from 20 March 2020 until 30 June 2020 are eligible for deferral. If a UK VAT registered business

chooses to defer payment of VAT to HMRC for this period, the VAT due will have to be accounted for on or before 31 March 2021.

- The deferral does not need to be notified to HMRC, but taxpayers that have a direct debit mandate in place to pay their VAT (and still wish to defer payment) will need to contact their bank to cancel that mandate.
- UK VAT refunds and reclaims will be paid by HMRC as normal.
- UK VAT registered businesses should continue to file their UK VAT returns by the normal due date.

2. INCOME TAX PAYMENT DEFERRAL

- The next payment date for self-assessed income tax on account may be deferred from 31 July 2020 to 31 January 2021.
- After some initial confusion, HMRC has confirmed this applies to all taxpayers.
- This measure applies automatically, without a requirement to apply to HMRC, but the deferment is optional (i.e. taxpayers may still elect to make payment on 31 July 2020).
- Self-assessment income tax returns should still be filed by the normal due date, and can be filed online.

3. UK TAX RESIDENCE OF INDIVIDUALS

- One of the factors the UK's statutory residence test considers is the number of days an individual spends in the UK. It is possible to exclude a maximum of 60 days spent in the UK in any tax year as a result of "exceptional circumstances". HMRC has issued guidance indicating that presence in the UK owing to COVID-19 may constitute "exceptional circumstances" for these purposes.
- However, whether days spent in the UK can be disregarded due to "exceptional circumstances" will depend on the facts and circumstances of each individual case.

4. TIME TO PAY ARRANGEMENTS

- HMRC sometimes agrees specific tax payment arrangements with taxpayers on a case-by-case basis (ordinarily for those in significant financial distress). HMRC has expanded its Time to Pay offer to all taxpayers in temporary financial distress as a result of COVID-19.
- HMRC has not indicated the extent to which a business would need to be affected by COVID-19 to qualify for a Time to Pay arrangement.

5. BUSINESS RATES RELIEF

- Businesses based in England in the retail, hospitality and leisure sectors will pay no business rates for the 2020/2021 tax year. This has also been extended to estate agents, lettings agencies and bingo halls that have closed as a result of COVID-19 measures.

6. OTHER MEASURES AND DEVELOPMENTS

- **Coronavirus Job Retention Scheme** Any employer (small or large) will be eligible for a grant equaling 80% of wages of employees who are unable to work but are kept on payroll. This measure is capped at £2,500 per month per employee, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. It is not clear yet whether the £2,500 limit is net or gross of PAYE and NICs.
- **Coronavirus Self-Employment Income Support Scheme** Self-employed individuals will be able to claim a taxable grant worth 80% of average monthly income taken over the last three years, capped at £2,500 per month. The scheme is only open to anyone with trading profits less than £50,000 and to those who earn the majority of their income from self-employment.
- **Statutory Sick Pay** Employers with less than 250 employees (as of 28 February 2020) may be reimbursed for up to two weeks' statutory sick pay for each employee absent due to self-isolation as a result of COVID-19. Details as to whether employee headcount applies on a group or company basis are yet to be confirmed.
- **Conduct of tax tribunals and courts** All proceedings in the Tax Chamber of the First Tier Tribunal are stayed for a period of 28 days from 24 March 2020 and all time limits in any current proceedings will be extended by the same period. The Court of Appeal will only be covering urgent work as of 27 March 2020.
- **Stamp Duty on share transfers** New procedures have been put in place so that the process for stamping stock transfer forms following share transfers is carried out by email (and not by post). Company secretaries will be able to update company shareholder registers upon receipt of an electronic verification letter from HMRC (rather than on receipt of duly stamped stock transfer forms). Stamp duty relief applications must be sent by email.
- **Off-payroll working rules (IR35)** New rules designed to mitigate tax avoidance by workers, and the companies hiring them, who supply their services via intermediary companies (but who would be employees if the intermediary was not used) have been deferred for 12 months until April 2021.

FRANCE

1. SOCIAL SECURITY PROVISIONS ([1])

The French government has introduced a series of measures to amend the social security regime in light of COVID-19. They come in addition to measures taken more broadly by the French government in respect of employment (in particular the “partial unemployment” scheme funded by the French government).

1.1 3-month payment extension for social security contributions

- Employers, whose due date for social security contributions falls on the 15th of each month, may postpone (without penalty) all or part of the payment of both their employee and employer contributions which are due on 15 March 2020 .
- Employers, whose due date for social security contributions falls on the 5th of each month, may postpone (without penalty) all or part of the payment of both their employee and employer contributions which are due on 5 April 2020. It is nevertheless imperative for employers to declare and file their social security “DSN” notification before **Monday, 6 April 2020 at 12:00 noon**.
- A similar 3-month extension applies for certain other taxes (see section 2.1 below).

1.2 Potential reduction in social security contributions

- Instead of postponing the due date of social security contributions, employers may choose to reduce the amount in order to adapt their monthly contributions depending on their commercial needs.
- For employers with a due date on the 15th of the month, the reduction depends on the date on which their February “DSN” notification has been filed. Employers with a due date of the 5th of the month, and in particular, employers who pay their contributions via the “DSN” portal, must transmit the March 2020 notification by **Monday 6 April 2020 at 12:00 noon**, and may adapt their SEPA payment with this “DSN” filing.
- Employers that do not pay their contributions through the “DSN” portal, but do so by wire transfer, may adapt their monthly contribution depending on their commercial needs.

1.3 Payment extension for supplementary pension contributions

An extension to the normal payment period is available for supplementary pension contributions. Employers are invited to contact their supplementary pension institution in this respect.

2. TAX PROVISIONS

2.1 3-month payment extension for certain other taxes

- Relevant taxes include corporate income tax, payroll tax and business tax (“**CFE**” and “**CVAE**”).
- A 3-month payment extension is available for all advance payments on request by companies or their accountant on presentation of a valid tax form available [here](#).
- In respect of payments already made in March 2020:
 - companies may refuse the SEPA direct withholding payment with their online bank if they still have the possibility to do so; and
 - where this is not possible, companies may request a reimbursement from their tax office.
- Notably, VAT, withholding tax on salary (“**PAS**”), special tax on insurance contracts and income tax are, in principle, excluded from the deferral. However, VAT may be deferred within the context of the Commission of Chief Financial Officers (“**CCSF**”) – (or Interministerial Committee for Industrial Restructuring, “**CIRI**”) cases (see section 3 below).

2.2 Potential tax rebate in the event of "material difficulties which a payment extension is not sufficient to overcome"

- A potential tax rebate may be available in respect of relevant taxes under section 2.1 above. Eligibility however is not automatic and any tax rebate will need to be applied for. The following factors will be relevant to the tax authorities according to the tax form provided:
 - a significant drop in turnover;
 - the existence of other outstanding debts; and
 - the cash flow situation or any other element likely to justify the rebate.
- Failing rebate, payment extension of more than 3 months may be granted by tax authorities on a case-by-case basis.

2.3 Accelerated payment of outstanding State bills

- Any request referred to under sections 2.1 or 2.2 above must be supplemented by the amount of bills awaiting payment by the French State (or equivalent) in order to facilitate payment by way of set-off.

3. OTHER EXISTING TOOLS REGARDING TAX AND SOCIAL CHARGES (REMINDER)

3.1 In case of financial difficulties: referral to the CCSF

- The CCSF may, in complete confidentiality, grant companies in financial difficulties extensions to payment deadlines in respect of their tax and social security debts (employer's part).
- The CCSF may be approached by the debtors themselves or by their ad hoc representatives.
- To be admissible, the company must be up to date with the filing of its tax and social security returns, the payment of employee contributions and withholding tax on salary and must not have been convicted of concealed work.
- The debts referred to above are, in particular, taxes and social security contributions but exclude employee parts and withholding tax on salary.
- The referral should be made by mail sent to the permanent secretariat of the competent CCSF with a standard form to be filled in which can be accessed [here](#).

3.2 Carryback of net operating loss (reminder)

- Carryback of net operating loss (“NOL”) makes it possible, as an option, to post the NOL result of a fiscal year to the profits of the previous fiscal year.
- Although of limited interest under the current rules, it is possible for the legislator to render once again the applicable rules more flexible as it did during the 2008 economic crisis. For this reason, we summarize below the main features of the applicable rules.
- Currently, the carryback mechanism is limited in time and amount:
 - In time: carryback is possible only with respect to the previous fiscal year;
 - In amount: carryback is limited to €1 million of tax losses (or to the amount of the profit of the previous fiscal year if it is lower), i.e. a refundable tax credit of c. €10,000 maximum.
- Where losses are carried back, the company recognizes a non-taxable tax credit from the tax authorities. This receivable is used to pay the corporate income tax due during the five fiscal years following the fiscal year in which the loss is incurred. It can also be used to pay VAT, payroll tax, etc. or reimbursed in advance in the event of insolvency proceedings.
- The receivable may also be refinanced by a bank at any time.

- To date, this mechanism will therefore only be useful for companies that incur a tax loss of up to €1 million during their fiscal year ending in 2020 and which were profit-making during the previous financial year.

GERMANY

The Federal Ministry of Finance (*Bundesfinanzministerium*) has unveiled a tax relief programme for companies that have run into liquidity problems due to COVID-19. In a decree issued on 19 March 2020, the Federal Ministry of Finance announced the following measures in order to provide liquidity aid for companies:

1. **Facilitated Tax Deferrals:**

- For taxes that are or will be due by 31 December 2020, the German tax authorities will allow deferral of taxes upon application if their collection would constitute a "considerable hardship" for the company.
- In this respect, the German tax authorities have been instructed not to impose strict requirements on the existence of considerable hardship necessary for the deferral. Companies applying for a deferral may still be considered even if the damage they incurred cannot be explicitly quantified or detailed.
- Interest on deferred taxes may be waived until 31 December 2020.

2. **Adjustment of Tax Prepayments:**

For the tax period ending 31 December 2020, tax prepayments are to be reduced as soon as it becomes apparent that a company's income in the current year will decline in relation to the previous year. This applies to income, corporate and trade taxes. As with the deferral, the losses incurred need not to be proven in explicit detail.

3. **Waiver of Enforcement Measures and Late Payment Surcharges:**

- If a company is unable to pay income or corporate tax on time, a late payment surcharge of 1% for each month or part thereof is payable. For companies directly affected by COVID-19, such late payment surcharges and other enforcement measures (e.g. account seizures) are suspended from 19 March 2020 until 31 December 2020.

From a tax perspective, further assistance measures are also currently being discussed at all levels. These include, for example, adjustments to tax filing deadlines (in particular with regard to advance VAT returns), the expansion of depreciation options, the early abolition of the solidarity surcharge and a more extensive crediting of trade tax. Whether, and to what extent, the legislator will take up corresponding measures is still open. In any case, the Federal Government in Germany has made it clear that it is ready and willing to provide companies with any kind of support.

[1] <https://www.urssaf.fr>



Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 pandemic. For additional information, please contact any member of the firm's Coronavirus (COVID-19) Response Team.

Gibson Dunn lawyers regularly counsel clients on the issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please also feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Tax Practice, or the authors:

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