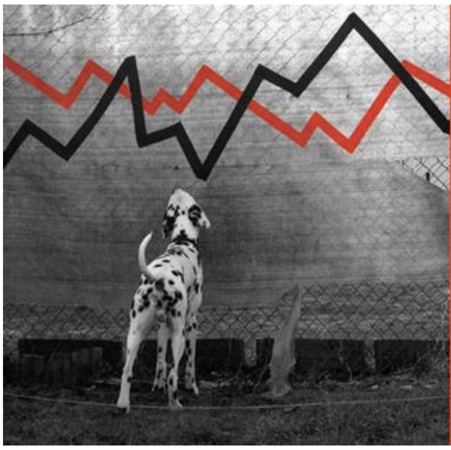

Luxembourg newsflash

31 March 2020

Government Economic Measures Summary

Tax

Tax payment deadlines been extended

Companies and self-employed individuals deriving their income from a commercial, agricultural, forestry, or liberal profession and experiencing liquidity problems as a result of the COVID-19 pandemic may submit a request to the tax authorities for the following:

1. a cancellation of quarterly (corporate) income tax advances and municipal business tax advances for Q1 and Q2 2020 (form accessible here);
2. a 4-month extension of the payment deadline, with no penalty, for any (corporate) income tax, municipal business tax or net wealth tax due on or after 1 March 2020 (form accessible here).

Eligible taxpayer requests for such cancellations and deadline extensions are automatically accepted.

Arendt's comment

The main goal of the tax measures announced is to provide liquidity in order to cope with cash flow needs. Accordingly, tax officers are instructed to accept any requests pertaining to:
(i) the cancellation of the tax advances for (corporate) income tax and municipal business tax for the two first quarters of 2020 and
(ii) postpone the payment of (corporate) income tax and net worth tax for up to 4 months.

It has to be noted that these benefits must firstly be requested by the taxpayer and are not granted spontaneously. Secondly, they constitute temporary deferrals only and in the end the relevant tax must nevertheless be paid. Accordingly, taxpayers should carefully choose whether to use these options and if so, plan ahead for the final payment date.

The government also announced an extension to the 30 June for the filing of tax returns of individuals and companies. Strictly speaking, income tax returns of a given year must be filed by 31 March of the following year, although a formal extension is generally granted to the 31 May and the administrative practice of the tax authorities usually accepts a filing until 31 December without penalties. This measure similarly aims at delaying the assessment process and hence the payments of tax in order to provide liquidities to the taxpayer, although in practice longer deadlines are quite common.

Advance refund of VAT and deadline extension

Early repayment of VAT: early repayment of credit balances below 10,000 euros. Extension of the filing deadline for VAT returns

Arendt's comment

Taxpayers subject to VAT may claim an early reimbursement of VAT credits below EUR 10,000 in order to create further liquidities and the tax authorities should renounce to levy penalties for late filings of VAT returns, declaration of successions as well as notarial and bailiff's deeds.

Bankruptcy

Bankruptcy

As of today, companies must file for bankruptcy within a month of ceasing their payments to creditors. Under the Covid-19 economic package, this obligation will be suspended.

Arendt's comment

A similar measure had been announced in Germany recently and we support that the Luxembourg government adopting the same approach with respect to Luxembourg companies. The duration of the suspension of the obligation to file for bankruptcy is not known yet but the relevant legislation is expected to be adopted shortly.

We also hope that the well-advanced draft legislation on reorganisation of companies facing financial difficulties and the implementation of the (so-called) Restructuring directive into Luxembourg law will progress at a faster pace due to the severe economic harm to businesses resulting from the Covid-19 crisis.

Bank financing

State-backed guarantee facility for new bank loans to SMEs and large corporates up to a maximum of 6 years

Guarantee new bank credit lines, for which the State guarantees up to 85% for a total amount of 2.5 billion euros.

Arendt's comment

In scope
The new law is intended to apply to loans granted by credit institutions between 18 March and 31 December 2020 for the benefit of companies holding a business license (i.e. operational businesses) and legal or natural persons exercising a liberal profession (e.g. doctors, architects, lawyers, etc.) who find themselves in temporary financial difficulty as a result of the Covid-19 outbreak. Cooperative companies in the agricultural and wine-growing sectors are also eligible.

Out of scope
The law would exclude the following from the above-mentioned guarantee scheme: (i) companies in the real estate sector, (ii) holding companies and (iii) companies that were already in financial difficulty prior to 1 January 2020. In essence, this law would not apply to leveraged acquisition finance structured through Luxembourg.

Compliance with the EU state aid regime
Furthermore, the bill of law specifies that no guarantee can be granted until the European Commission confirms the compatibility of this aid scheme with the rules of the European Union's internal market.

Eligibility for the guarantee scheme
The intended guarantee is restricted to loans with maturities up to six years. To be eligible for the guarantee, the loan amount may represent no more than 25% of the beneficiary company's turnover in 2019 or, failing that, in the most recent year for which relevant data exists. Different thresholds apply for young innovative companies (jeunes entreprises innovantes).

The State guarantee is set to cover 85% of the amount of principal and interest, leaving the banks at risk for 15%.

The bill of law places the onus on credit institutions to verify that a loan fulfils all of the above-mentioned criteria. The loan agreement must provide that the loan shall become due and payable immediately in the event of non-compliance by the borrower with the provisions of the bill, in particular if the borrower intentionally provides inaccurate information in order to benefit from the guarantee.

Sanctions
The bill also provides for criminal penalties (four months' to five years' imprisonment and a fine of €251 to €30,000) for persons who knowingly obtain any of the stipulated benefits on the basis of inaccurate or incomplete information.

Agreement with the State Treasury
A credit institution wishing to grant loans under the guarantee must conclude an agreement with the State Treasury (Trésorerie de l'Etat) and notify the latter of each loan concerned using a special computer portal for this purpose. The guarantee will be remunerated on a sliding scale depending on the size of the company and the maturity of the loan it covers.

Non-cumulation rule
The bill of law specifies that a State guarantee may be used to cover multiple loans granted to the same company. Companies using the guarantee scheme may also take advantage of other support measures introduced by the government. However, once granted, the guarantee cannot be used cumulatively with other guarantee measures offered by the State for the same loan.

Conclusion
Depending on how the situation evolves, the government also understands that it may be necessary to adopt additional measures over a longer period to support companies, inter alia by acquiring their securities or equity stakes in their capital, subject to compliance with the rules on State aid. To this purpose, the government is also seeking authorisation to resort, if necessary, to one or more loans totalling up to €3 billion.
There will probably be criteria in the law that the credit institutions shall need to assess in order for the borrower to benefit from the State guarantee. In addition, the credit institution shall continue to be bound by its obligations in terms of risk management before deciding to grant a loan. Accordingly, credit institutions will need to ensure compliance with applicable ratios and thresholds and perform their prior assessment of the debtor's creditworthiness (in line with points 221 ss. of amended CSSF Circular 12/552 on central administration, corporate governance and risk management) before deciding to grant a credit eligible for the State guarantee.

Financial relief summary

Whilst the legislation necessary for the Covid-19 economic package is emerging (for example, the Luxembourg Parliament has today passed Bill No. 7532 establishing the scheme of aid to companies in temporary financial difficulties) there are certain unknowns on the wider economic measures and the devil will be in the detail. It is key to follow evolutions as details become available and practice/experience develops for these welcomed measures.

Anticipation is key, especially for cash flow management. This also applies to relief measures. While some measures may have an immediate benefit (e.g. tax moratorium), some others may need time to implement: State backed guarantees will have elements of negotiation between the bank and the borrower, the terms of a FSAC (financement special anti-crise), will likely require some SNCI due diligence. There may be a large number of requests for relief, which may slow down awards.

A mix of different relief measures is possible, but in some instances one may expect mutual exclusiveness. So a holistic approach to the measures is, where possible, recommended.

An analysis of the interaction between the use of such measures and existing contractual arrangements is required (f.i. avoid that the recourse to such special measure creates a default/breach under a loan or supplier agreement or other past aids/investments).

Postponement of payments does not mean cancellation of obligation to pay and hence the burden of the borrower's financial debt will not decrease. It may be wise to not use all relief measures to the fullest extent, as this could strain the cash situation at the end of the standstill period, which coincides with a possible economic pick-up. When negotiating with the banks a "hard stop" of a standstill vs. a more staggered transition is a key element of negotiation.

Eligibility for a type of relief depends on the company's size, notably turnover. To assess such 2019 accounts may be the reference. So it is key to have your annual accounts/other accounting records in good shape to assess eligibility. An update 'crisis factoring' business plan (where feasible) may also be useful to assess need (hence eligibility) for relief where 'crisis' type pre-conditions apply. Some measures will have a certain level of transparency, which companies may wish to manage.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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