
SUSPENSION OF TAX AND CUSTOMS AUDITS

Who, when, how?

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Extension of procedural deadlines during a state of health emergency: What are the impacts on tax and customs?

Ordinance n°2020-306 of 25 March 2020, published in the Official Gazette of the French Republic on 26 March 2020, provides for the suspension and extension of time limits and measures that have expired or expire between 12 March 2020 and the end of a period of one month from the date of termination of the state of health emergency (Article 1 of the Ordinance).

This Ordinance has a general scope and covers any type of act or procedure, with the exception of time limits and measures resulting from the application of rules of criminal law and criminal procedure in particular.

Articles 10 and 11 of the Ordinance provide for a number of measures concerning fiscal and customs matters.

I - Are tax and customs audits suspended?

Among the questions raised during this unprecedented period, there is one that has been keeping businesses on the edge for several days: are tax and customs controls and procedures continuing?



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The Government provides several answers to this question, by means of ordinances, which deserve clarification and some practical recommendations.

1 - First, the Ordinance provides for the suspension of the statute of limitations expiring on 31 December 2020.

In fact, the Act of 23 March 2020 declares a state of health emergency for a period of two months from the promulgation of said Act to the JORF of 24 March 2020, i.e. until 24 May 2020.

As a result, in all likelihood, this suspension period should end, unless the legislator decided to postpone the state of emergency, on 24 June 2020.

It will be necessary, in the near future and once this suspension period has been set, to ensure that these deadlines are known. We will be there to keep you posted!

2 - Provision is also made for the suspension, both for the taxpayer and for the tax and customs authorities, of all the time limits provided for in the context of the conduct of audits and investigation procedures in tax and customs matters, *without the need for a decision to this effect from the authorities. The suspension of time limits also concerns those applicable to rulings, refund applications, etc...*

This announcement is more than welcome for ongoing controls (examples: suspension of the deadlines for replying to a notice of an investigation result / prior tax assessment notice, suspension of the deadlines for providing information or documents, etc.). However, we invite businesses to be prudent and pragmatic on this point. ***This suspension period will be of a duration equal to that presented in the previous point: from 12 March 2020 to the end date of the state of emergency increased by one month.***

In spite of the automatic postponement of tax and customs audits operations, it is strongly recommended to contact the authorities in charge of any ongoing audit, even if only to verify the effectiveness of the suspension provided for by the ordinance, in order to avoid any unpleasant surprises at the end of this state of emergency period.

3 - Finally, *the Ordinance also suspends the time limits implemented as part of the experiment to limit the duration of tax audits on certain companies* in the Hauts-de-France and Auvergne-Rhône-Alpes regions.

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As a reminder, as of 1 December 2018 and for a period of four years, in these two regions, the cumulative duration of tax audits carried out by the tax authorities must not exceed, for small size businesses, nine months over a period of three years in accordance with the ESSOC Act of 10 August 2018.

Although of limited territorial application, this suspension measure deserves to be highlighted.

II - What about the payment of taxes and duties?

The ordinance is clear on this point: the deferral in respect of tax audit operations **does not apply to declarations used for the assessment, liquidation and collection of taxes and duties.**

The suspension was granted for March, but uncertainty was allowed as to the payment of tax and customs debts for the month of April 2020, the Government has decided: **the declaration and payment of taxes, duties and fees should not be suspended beyond March.** According to the Report to the President of the French Republic, the objective is to "*preserve the collection of public revenue necessary for the operation of public services and the support of the economy*".

That being said, it is necessary to reconcile this provision with last week's announcement that the Government fully supports the companies facing the greatest difficulties due to the Coronavirus crisis **by allowing them to request a deferral of the payment of direct taxes due for the month of March or direct tax rebates.**

In this respect, may new deferral requests be submitted for duties and taxes due for the month of April? Nothing is less certain, but the opportunity may arise.

As for the requests already submitted for March, *a priori*, no worries: **the payment of these taxes is postponed until June 16, 2020¹!**

However, doubts are now allowed regarding the following months, even though the cash flow of companies will be put to the test in the coming months.

Finally, it is important to recall that this postponement (in particular for the month of March) does not *ipso jure* concern duties and taxes collected by the customs authorities, although the latter have confirmed that they would show flexibility in cases of critical situations.

¹ See our previous note on the government's announcements of March 12, 2020.

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III - Is provision also made for the suspension of collection periods?

As a result of this Ordinance, the time limits applicable to the recovery and contestation of claims provided for under penalty of nullity, lapse, foreclosure, prescription, unenforceability or forfeiture of a right or action shall be *suspended for the duration of the state of health emergency plus three months*.

These provisions concern all debts whose recovery is the responsibility of public accountants and should in all likelihood concern *both tax and customs recovery and litigation*.

While all of these measures taken in this very particular context of a state of health emergency are to be welcomed, we invite businesses to be *pragmatic and vigilant* in monitoring and anticipating these matters and the associated time limits / statute of limitations.



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