



Expert Contribution

April 2020

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TAX DEBT PAYMENT FACILITIES:

for whom and what procedures?

April 1, 2020

While the Government announcements, legislation and other regulatory publications in response to the Covid-19 outbreak are proliferating, the actual applicable law and its clarity for taxpayers is suffering. Just yesterday, March 31, 2020, Gérald Darmanin, Minister of Action and Public Accounts, announced a deferral of the 2020 income tax reporting campaign.

In this context, LHLF team wishes to update everybody on payment facilities and other existing tax measures to relieve taxpayers in these troubled times.

I - Payment facilities and direct tax reliefs

The Government's response to the current situation was immediate in terms of direct taxes. As mentioned in several previous articles, a number of measures have enabled French companies to face the crisis, at least in the initial stages: **deferral of direct tax payments, accelerated reimbursement of certain tax credits** and, where appropriate, **tax rebates in the most difficult cases**.

At the same time, by suspending tax audits throughout the period of the state of health emergency, the Government has once again shown its willingness to temporarily ease the burden on taxpayers.

However, a large number of questions remain. Initially announced for March 2020, these measures, as they stand, do not concern direct tax debts for the months of April and after. Moreover, the Government has, in an Ordinance, maintained the taxpayers' reporting obligations for the coming deadlines. Does this mean that taxpayers are helpless? We do not think so!

1 - First of all, companies will always have the possibility of applying for a **deferral, adjustment or suspension** of their tax debt, with, if necessary, the establishment of a tax payment schedule. This decision to pay by instalments, adjustment or suspension is the responsibility of the Public Accountant. Of course, this prerogative of the Public Accountant falls within his **discretionary competence**!

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In the absence of any indication as to the appropriateness of such requests during the state of emergency, reference should be made to common law. In this sense, although the Public Accountant may show leniency in view of the difficulties experienced during this period, it is to be expected that the Public Accountant will **carefully examine the reasons for the request**.

A certain number of **supporting documents** relating to the financial difficulties encountered by companies would in this sense be required, contrary to the requests for automatic deferral which could be made in respect of the payment of the direct taxes of March 2020.

Moreover, these requests are of a **voluntary nature**, and in practice it is expected that the processing of these requests will take longer. We therefore invite taxpayers to submit such requests as soon as possible in order to preserve their cash flow.

A clarification on this point by the tax authorities would be more than welcome!

2 - On the other hand, both the Government and the tax authorities have announced that they wish **to rapidly reimburse tax credit claims** (CIR, CICE, carry-back in particular) in order to relieve companies' cash flow as much as possible. *A priori*, these accelerated reimbursements would not be subject to any justification. This situation deserves to be maintained for the coming months. It is to be hoped for a rapid response on this point.

Thus, while companies will, in all likelihood, be able to benefit from payment facilities on a case-by-case basis for the upcoming months, **the situation we are going through invites the Government to take more structural tax deferral or rebate measures**.

Although companies' cash flow was "safeguarded" in March, the structural decline in economic activity is ongoing: reduction in the number of orders, non-payment of certain supplier invoices, etc... Although priority should be given to fixed charges and especially wages, it would also be appropriate to relieve companies of the burden of certain tax debts.

At the same time, it also seems essential that the Government **quickly announces the postponement of the April and May tax declaration deadlines**. The tax authorities have, in this sense, postponed the filing of the tax package from 16 to 31 May 2020.

However, other deadlines are looming for the next two months: DAS2, local taxes (CFE and CVAE) and C3S. A request has been made to the DGFIP (tax authorities) to postpone all these deadlines until 30 June 2020. It is still under consideration today. Work in progress...

These various considerations related to payment facilities are also part of the reflection that must be conducted to **think about the post-crisis period**. Companies will have a vital need for cash to continue or restart their activities.

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II - Payment facilities and indirect tax relief

The impact of Covid-19 on businesses is the subject of many questions, particularly with regard to VAT and other indirect taxes.

However, while many measures in support of businesses have been adopted by the Government with regard to direct taxes, it seems that VAT has not received the same consideration.

In his press release dated 22 March 2020, the Minister for Action and Public Accounts announced that companies will not be able to postpone their VAT declaration deadlines. Consequently, companies will have to continue to declare and pay VAT according to the usual timetables. Failure to declare on time will expose companies to **late payment penalties and a 10% surcharge**. In addition, failure to pay VAT is subject to a **5% surcharge plus late payment penalties**.

However, **it has been announced that claims for VAT refunds will be treated in an accelerated procedure**. Companies are therefore advised to submit their refund claims electronically as soon as possible.

A brief reminder of the VAT refund procedure offered to businesses in a VAT credit situation:

When the company is in a VAT credit situation, it has the choice between:

- offset its VAT credit on the next VAT return or;
- apply for a refund of the VAT credit.

The company is in a VAT credit situation when input VAT is higher than the output VAT?

How to obtain the refund of a VAT credit?

1 - Procedures for a VAT credit refund

- Companies subject to the “régime reel normal”:

When the VAT return is filed monthly or quarterly: the refund of the VAT credit can be claimed if it **exceeds EUR 760**.

If the VAT return is filed annually: the refund of the VAT credit can be claimed if it **exceeds EUR 150**.

- Companies under the “régime reel simplifié”:

The VAT return is filed annually, in May, and advance payments are made in July and December. The VAT credit can be refunded if it **exceeds EUR 150**.

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2 - The VAT refund application:

The refund application is **submitted electronically** to the company's tax authorities' agency (Service des Impôts des Entreprises).

- For companies under to the “régime reel normal”:

For a refund during the ongoing fiscal year, a **special form (cerfa n°3519-SD)** must be attached to the monthly or quarterly declaration.

For companies that declare their VAT annually, the special form must be filed at the end of their fiscal year.

- For companies falling under the “régime reel simplifié”:

The refund of the VAT credit is claimed when filing the annual VAT return **in the dedicated box**. This claim must be submitted:

- o No later than the **2nd working day following 1 May**, for the calendar year; or
- o **within 3 months of the end of the financial year**.

Thus, VAT reporting obligations are not affected by the health crisis we are facing. Companies must continue to respect their usual deadlines, while continuing to benefit from the procedure for refunding their potential VAT credits, within, in principle, accelerated deadlines.

Nota Bene:

1- As the request for VAT credit refund is a litigation claim, it is nevertheless impacted by the measures relating to the suspension of tax audits and judicial proceedings announced in March 2020 by the Government.

Indeed, the claim for refund of VAT credit is a litigation claim whose rejection must be motivated by the tax authorities and can be contested before the administrative judge within two months. However, on 15 March 2020 the Minister of Justice announced the closure of the courts (except for "essential cases").

What are the consequences?

- If, on 12 March 2020, the tax authorities' two-month deadline to reply (or six months in the case of an implied rejection) to a request for a VAT credit refund had not expired, that period shall be suspended and shall start to run again, deducting the time that has already elapsed, at the end of the one-month period following the end of the state of public health emergency (i.e. the reference period), i.e., under the applicable law, starting 24 June 2020;

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- If on 12 March 2020, the time limit for appealing to the administrative court against a tax authorities rejection decision had not expired, the time limit shall be suspended and taxpayer may file an appeal within the remaining time limit, which may not exceed a period of two months from the end of the aforementioned reference period. In practice and in the state of applicable law, this rejection decision may therefore be challenged, depending on the circumstances, until 24 August 2020.

However, it should be noted that the closure of the courts means that, in practice, a rejection of the refund request may not be able to be contested and treated before the administrative judge in an accelerated manner.

2- On the other hand, within the framework of the refund application, the tax authorities have the right to carry out material controls and to consult any accounting or supporting documents relating to this claim. However, again, tax audits are suspended and cannot be carried out before the end of the one-month period following the end of the state of emergency.



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Lighthouse LHLF - Lawfirm

Our areas of expertise are taxation and customs law.

We have a long-standing experience in direct taxation (i.e. corporate income tax), both national and international (i.e. double tax treaties, withholding tax, transfer pricing, etc.), but also in indirect taxation (i.e. VAT and indirect taxes), and customs law. Finally, we have also developed expertise in the field of excise duties (energy products, etc.) and environmental taxation (TGAP).

In all these areas, we combine our expertise in both advisory and litigation (in particular audit assistance, but also judicial or administrative litigation). We also handle legal issues related to our clients' national or international tax or customs operations.

We offer tax and customs content of the highest quality, taking into account above all the operational requirements of our clients.

The LHLF team combines a high level of technical expertise with the greatest capacity for adaptation to deal with exceptional situations and ever-changing challenges.

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