



OPPORTUNITIES TO IMPROVE CASH FLOW: DEFERRAL OF PAYMENT OF DIRECT TAXES AND FLEXIBILITY IN THE COMPUTATION OF VAT

Where do we stand on April 8, 2020?

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April 8, 2020

As we reported in a previous alert, measures related to COVID-19 are increasing. In this context, while it should be noted the remarkable responsiveness of the Government, it is obvious that the application of the tax rule is becoming more complex in the hurly-burly of all the Government announcements and measures, some of which may seem contradictory.

In this respect, two themes in particular have caught our attention because they offer opportunities to improve cash flow for companies: the deferral of the payment of direct taxes due in April (I) and the measures to ease the computation of VAT due during the containment period (II).

I - Extension of the deferral of payment for direct taxes

Gérald Darmanin, Minister of Action and Public Accounts, announced in a press release dated 3 April 2020 an extension of the deferral of payment for direct taxes and social contributions. While the measure was expected and seemed inevitable, several remarks are worth making.

1 - This deferral mechanism, which was initially introduced for direct taxes due in March, has been extended for April. This news, which deserves to be welcomed, marks a certain turnaround from the government in this area. Initially expressly excluded by the French Government, a new deferral seemed unavoidable as the crisis and the decline in activity continues...



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It should also be noted that, based on its press release dated April 3, 2020, the Ministry of Action and Public Accounts, initially seemed to be targeting only requests for tax deferrals.

However, the [specific form](#) to be sent to the French Tax Authorities Department dealing with businesses (SIE) in order to benefit from this deferral has been updated, and it still includes the **option to requesting a rebate of direct taxes, interest on late payments and penalties**. Also, companies experiencing significant financial difficulties due to the COVID-19 crisis will still be able to apply for such rebates.

Once again, this announcement is to be welcomed. The effect on companies' cash flow will be positive in the short term. However, this deferral option will not wipe out the tax debt, unless the authorities announce otherwise, but no such initiative has so far been mentioned. On the contrary, the Ministry has pointed out that the incentives were **financed by the French State debt** and that they should be paid back in due course. To date, the modalities are still under discussion.

2 - Among the new features, this deferral mechanism is **now conditional** for large companies or companies belonging to a large group of companies.

In practice, the companies covered by this conditional mechanism are those which, during the last fiscal year, **employed at least 5,000 people in France** or had **consolidated turnover of at least 1.5 billion euros**. In addition, the government specifies in a [FAQ](#) that the concept of group can be understood by referring either to the definition used for the CVAE (Article 1586 quater I bis of the CGI) or to the definition used for tax consolidation (Article 223 A of the CGI).

These companies will be able to benefit from the possibility of deferral and/or rebates of direct taxes due for the month of April on condition that they do not (i) **distribute any dividends** and (ii) **repurchase any shares** for the period from March 27, 2020 to December 31, 2020.

From this perspective, the notion of dividend was assessed by the Government in a broad manner. In particular, it includes interim dividends and exceptional distributions of reserves. The same applies to share buyback operations.

In order to assess whether a large company is eligible for this deferral request, it will be necessary to verify that the date on which the competent corporate body to decide the distribution of dividends or the share buyback happened **before March 27, 2020**.

What will happen if this condition is not complied with?

As it currently stands, the company will be subject to the late payment penalties applicable in the event of non-payment of taxes and contributions (**5% initial increase + 0.2% per month of delay**), as provided for in the tax legislation.

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In addition, the Government has specified that the company will not be able to benefit from a time limit agreement for the extended deadline and will have to pay the unpaid amounts immediately.

Thus, a certain number of clarifications are still awaited on the various points presented above. Indeed, in the current state of the specific deferral request form and of the Government's announcements, what will happen to a large company having benefited from a deferral or rebate request in March (i.e. before the Government's announcements in early April), but proceeding with a dividend distribution or share buyback after 27 March 2020? Would it still benefit from the favorable measures in relation to March? Nothing is less certain!

Urgent clarifications are awaited on this last point in particular.

II - Expected easing related to VAT payments

Quite left behind by the exceptional measures taken by the Government since 13 March 2020, unlike some of our European neighbours, VAT now benefits from temporary easing measures aiming at simplifying the determination of the VAT due.

Beware however, unlike direct taxes, these measures do not allow the deferral or remittance of the VAT to be paid.

1 - In concrete terms, **companies subject to the normal VAT regime** (filing of monthly or quarterly VAT return), **unable to gather the required documentation to establish their March VAT return**, have the possibility to **estimate a flat amount of VAT to be paid** in the form of a deposit. To be noted that companies subject to the simplified VAT regime are not concerned by this measure.

Practically speaking, for the March VAT return filed in April, the advance payment can be determined as follows: (i) estimation of the VAT due for March and payment of a deposit equal to 80% of this estimation or (ii) payment of a deposit equal to 80% of the VAT paid in February 2020.

These instalments must be mentioned in box 5B of the VAT return. Moreover, in the absence of clarification by the French Tax Authorities, it seems necessary to us to indicate in the box dedicated for correspondence with the French Tax Authorities the reference « Covid-19 advance payment, March 2020: application of the administrative tolerance » (in French, « *Acompte Covid-19 mars 2020 : application de la tolérance administrative* »).

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Even if this measure is welcome, some questions remain outstanding: does the French Tax Authorities reserve the right to carry out an *a posteriori* audit of these instalments, and if so, how would « *the inability of companies to gather the required documentation to establish their VAT returns* » be interpreted? Furthermore, what about the regularization of the VAT effectively due? Finally, does this softening only concern the VAT due for March? Given the current context, it is likely that it also concerns the VAT due for April, but this remains to be confirmed.

2 - In addition, companies that have experienced a decrease of their turnover due to the Covid-19 crisis have the possibility to **pay the VAT due during the containment period based on a flat amount instalment** (to date, this measure concerns the **months of March and April**). It remains to be determined what the tax authorities understand as being “a decrease of turnover” in the event of a retrospective audit of the VAT returns.

This advance payment corresponds to **80% of the amount of VAT paid for the previous month** or **50%** in the event that activities have been stopped since mid-March (or if the decrease of turnover is estimated at 50% or higher). When proceeding with the deposit, the mention « *Covid-19 advance payment - Flat amount 80% of month xx* » must be indicated on the VAT return (in French, « *Acompte Covid-19 – Forfait 80% du mois xx* »).

To be noted that companies will have to regularize their situation in the VAT declaration filed after the confinement period in box 2C.

In conclusion, even if we can only welcome these measures which have a short-term beneficial effect for companies' cash flow, it is necessary to follow them assiduously, in particular, in view of the regular announcements which specify, or even condition, the benefit of these tolerances.

For this purpose, we continue to follow up on a daily basis, for you, the announcements of the public authorities, which may evolve in the coming days ...



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