



# TIME TO ADAPT

## COVID-19

Overview of emergency tax, social and legal measures  
taken by the French Government

During the Covid-19 crisis, we shared with you our analysis on tax, social and legal measures adopted by the French Government.

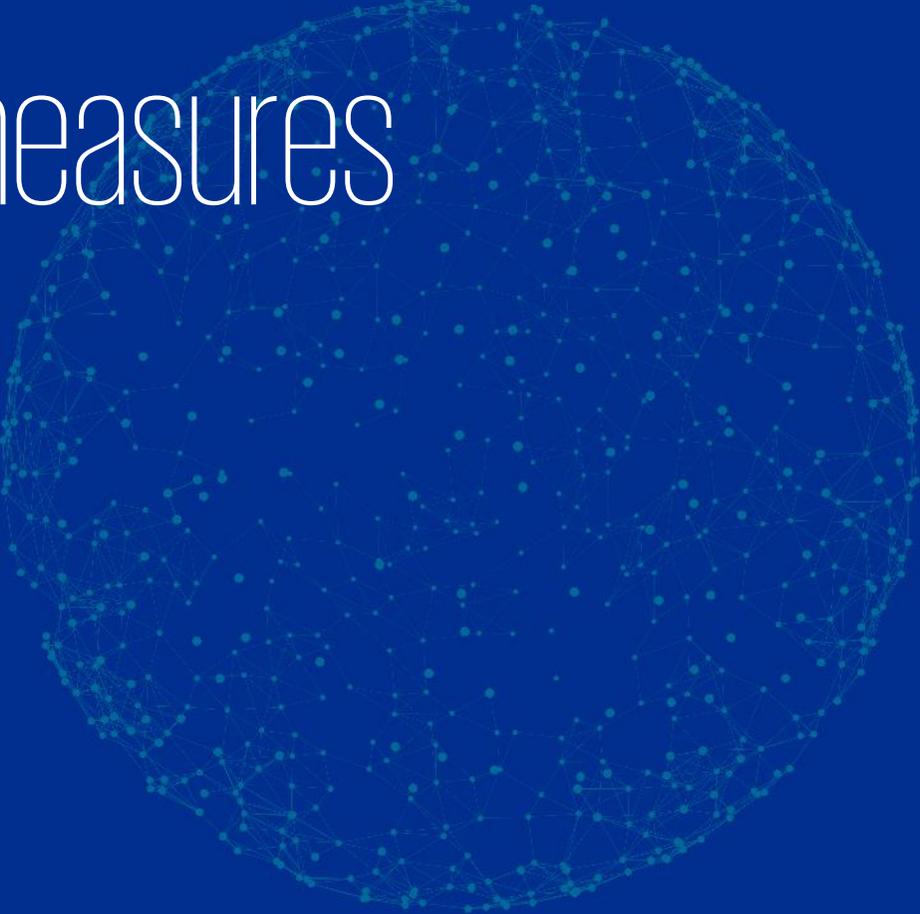
This update now only presents the measures that are still applicable. You can check the previous versions of our presentation on our website via this link: [KPMG Avocats – Covid-19](#)

Also, we will continue to inform you with our focus and alerts here: [Link to Kpmg Avocats page-news](#)



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# Tax measures



*Because of the particular context in which we are all operating, this document should be considered as a synthesis to date of the tax, social and legal measures taken by the Government regarding the Covid-19 crisis. We would also like to draw the reader's attention to the evolutionary nature of this report*

## Tax postponements and/or rebates (1/3)

### Any company **in difficulty as a result of the health crisis** could postpone, without penalty, the payments of direct taxes due in March, April, May and June 2020

- ❑ Applicable to all direct taxes (CIT and payroll taxes) but not to VAT, indirect taxes, the withholding of the employees' personal income tax levied by employers or social solidarity contribution
- ❑ Also applicable to payment of wage tax due in July and August (postponement by 3 months)
- ❑ Upon request to the competent tax center without justification by submitting a simplified form
  - Applications that are "manifestly unfounded" with regard to the activity carried out are likely to be rejected by the tax authorities
  - Applicable also, under certain conditions, to companies which are facing practical difficulties to meet compliance deadlines without facing financial difficulties
- ❑ As a counterpart, "large companies" must commit not to distribute dividends in 2020 and not to be established in a non-cooperative State or territory (*please refer to [Tax postponements and/or rebates \(3/3\)2020 distributions: Commitment to responsibility required from large groups p. 8](#)*)

### Payment of the '*cotisation foncière des entreprises*' (business contribution on property) and the '*taxe foncière*' (property tax)

- ❑ Upon request to the tax center, the monthly payments can be suspended
- ❑ The total amount of unpaid tax will be settled upon final payment, without penalty
- ❑ For the industry sectors which have been the most highly impacted by the health crisis (tourism, hotels, restaurants, culture, events organization, sport, air transportation): automatic postponement of the full amount of the CFE until 15 December 2020 without penalty
  - For small and mid-size companies (with revenue < 150m€): waiver of 2/3 of the 2020 CFE (subject to relevant decision by the respective local public bodies by 31 July 2020)
- ❑ Possibility to take into account the cap of the CFE based on the added value when applicable for the June installment of the CFE

## Tax postponements and/or rebates (2/3)

### Settlement plan for tax payments

- ❑ Who can claim the benefit of the settlement plan ?
  - Companies facing serious economic difficulties to preserve the continuity of their business as a result of the health crisis
  - Which have started to operate their business at the latest on 31 December 2019 and are up-to-date with their tax compliance obligations
  - Qualifying as small and mid-size companies (revenue < 50m€ or total balance sheet < 43m€ + employees < 250)
  - Which have already asked payment deferral to their creditors for payables due between 1 March and 31 May 2020
- ❑ Scope will cover all direct and indirect taxes collected by the DGFIP which should have been settled between 1 March and 31 May 2020 (e.g. CIT balance and monthly VAT payments from February 2020 to April 2020)
  - Tax payments assessed during a tax audit are excluded
- ❑ Maximum duration: 36 months (from 12 months to 36 months subject to the level of tax and social liabilities vs. the revenue)
  - Securities are required when the duration exceeds 12 months
  - First payment at the earliest on 1 September 2020 for settlement plans executed before that date
- ❑ Settlement plan waived if any of the above conditions is not met or if payments are not duly and timely made according to the plan
- ❑ Request filed at the latest on 31 December 2020 by submitting a specific form to the tax office

### The CCSF ('Commission des chefs des services financiers') can grant companies in financial difficulties payment deferral plans for tax and social security debts (employer's contributions).

This commission can grant companies that encounter financial difficulties payment terms for their tax and social security debts (employer's share) in complete confidentiality

- ❑ Who can introduce the request?
  - The debtor itself (trader, craftsman, farmer, individual exercising an independent professional activity and legal entity under private law (companies, associations))
  - The *ad hoc* representative
- ❑ Conditions
  - Be up to date with the filing of tax and social security returns and the payment of employee contributions and personal income tax of employees at source
  - Not have been convicted for undeclared work
- ❑ Nature and amount of debts
  - All taxes, social security contributions to the exception of the employee social contributions' share and personal income tax of employees at source
  - No minimum or maximum amount
- ❑ Which CCSF is competent?
  - In principle, the CCSF of the department of the company's head office or principal establishment

## Tax postponements and/or rebates (3/3)

- **CIT installments to be paid during FY opened before 20 August 2020 can be reduced on the basis of the estimated CIT charge for the said FY**
  - ❑ Acceptable error margin increased to up to 30% for the second CIT installment
  - ❑ Subject to the application of a 5% penalty and late payment interest in case of under estimation of the said CIT installments (taking into account the acceptable error margin)
  - ❑ Companies having benefited from a deferral of the 15 March CIT installment until 15 June are allowed to postpone the 15 June CIT installment but 15 September CIT installment will have to be adapted to include the unpaid 15 June CIT installment

## 2020 distributions: Commitment to responsibility required from large groups

### What is the content of the commitment to responsibility?

- ❑ Not to distribute dividends in 2020 to (French and non-French) shareholders, including interim dividends and exceptional distributions of reserves
  - Except in case of legal obligation to distribute dividends in 2020 (but only up to the amount which is required to be distributed)
  - Except in case of dividend distributions within the group of companies (*as defined below*) when such dividends are aimed to provide financial comfort to a French company
  - To be noted: dividends received by French companies from their non-French subsidiaries are authorized
- ❑ Not to perform any share buy-back in 2020
  - Except in the context of free shares plan to the benefit of employees
  - Other specific exceptions are available when the share buy-back is linked to an event/obligation existing prior to 27 March 2020

### From which companies is this commitment required?

- ❑ Large companies
  - Any company (or group of companies) which, during the last FY, meets one of the following criteria:
    - Having employed at least 5,000 employees or
    - Having realized consolidated revenue exceeding €1.5bn in France
  - The concept of 'group of companies' refers to the definition used for the CVAE or the tax consolidated group (95% control threshold)
    - Not applicable to the foreign subsidiaries of a French group

- Applicable to all French subsidiaries of a group controlled by a foreign parent company

- ❑ When such companies have benefited from:
  - Deferral of (or rebates to) tax payments or social security contributions
    - Accelerated refund of tax credits and tax receivables are not taken into consideration
    - The partial activity mechanism is not taken into consideration (although the French Government asks large companies benefiting from partial unemployment aids to lower as much as possible dividend distributions)
  - A guarantee from the State on loans they have taken on
- ❑ The commitment is required from all French entities of the group when at least one of the members has benefited from one of the above measures even if a concerned group company has not benefited itself from a deferral or rebate of tax or social contribution

### The commitment does not apply to:

- ❑ Dividend distributions or share buy-backs decided before 27 March 2020
- ❑ Deferral of tax payments or social security contributions obtained before 27 March 2020 or State guarantee granted before 27 March 2020

### The failure to comply with the commitment to responsibility triggers:

- ❑ The immediate reimbursement of the full amount of loan guaranteed by the French State or the tax payments and/or social security contributions benefiting from the rebate or postponement
- ❑ 5% penalty + 0.2% monthly late payment interest

# Commitment not to be established in a non-cooperative State or territory required from large groups

**In addition to the commitment to responsibility, “large companies” (as defined under such commitment) must commit not to be established in a non-cooperative State or territory when they are requesting a deferral of tax payments or social security contributions or a State-guaranteed loan**

- ❑ The commitment is also required from all French entities of the group when at least one of the members has benefited from one of the above measures even if a concerned group company has not benefited itself from a deferral or rebate of tax or social contribution

**Non-cooperative States or territories are those referred to under Section 238-0 A of the French Tax Code**

- ❑ As at the date the deferral of tax or social payments or State-guaranteed loan has been granted
- ❑ The current list is as follows (last update: 6 January 2020)
  - Anguilla, Bahamas, Fiji, Guam, American Virgin Islands, British Virgin Islands, Oman, Panama, American Samoa, Seychelles, Samoa, Seychelles, Trinidad and Tobago, Vanuatu

**What is the content of the commitment?**

- ❑ Not to have its registered office or, if different, its actual head office or a subsidiary without economic substance in a non-cooperative State or territory

**Which entities are considered as “subsidiary without economic substance”**

- ❑ Direct or indirect subsidiaries of French entities only with 50% of capital or voting rights
- ❑ Economic substance is deemed to exist when the entity mainly operates an actual commercial or industrial business locally

**Ongoing evaluation of compliance as long as the company benefit from the tax or social payment deferral or the State-guaranteed loan**

- ❑ If the company has benefited from such measures between 27 March and 23 April 2020
  - Appreciation as from 23 April 2020
  - Possibility to remediate to the situation within a 3 month-period as from 5 May 2020
  - Failing this, immediate reimbursement of the full amount of State-guaranteed loan or the tax payments and/or social security contributions benefiting from the rebate or postponement + penalties and late payment interest
- ❑ If the company has benefited from such measures as from 23 April 2020
  - Appreciation as at the date when the company benefited from such measures
  - As the case may be, commitment to remediate to the situation within a 3 month-period
  - Failing this, immediate reimbursement of the full amount of State-guaranteed loan or the tax payments and/or social security contributions benefiting from the rebate or postponement + penalties and late payment interest
- ❑ If the company ceases to comply with the commitment
  - Possibility to remediate to the situation within a 3 month-period
  - Failing this, immediate reimbursement of the full amount of State-guaranteed loan or the tax payments and/or social security contributions benefiting from the rebate or postponement + penalties and late payment interest

## Accelerated refund of tax credits

### Guidance has been given within the tax administration to accelerate the refund of the following tax credits and receivables:

- VAT credits
- Tax credits refundable in 2020 (with no need to wait for the filing of the tax return)
  - CICE (competitiveness and employment tax credit)
  - CIR/CII (R&D tax credit)
  - Tax credit for film production expenses
  - Tax credit for production expenses for audiovisual works
  - Tax credit for foreign film and audiovisual production expenses
  - Tax credit for businesses engaged in live musical or variety shows
  - Tax credit for phonographic production expenses
  - Tax credit for video game makers

### Documents to be submitted to the tax center

- Tax credit refund claim (form #2573)
- If not already submitted, tax return justifying the amount of the tax credit (form #2069-RCI or specific return)
- If the CIT return is not available, CIT balance return (form #2572) computing the CIT charge of the year and the refundable tax credit for 2020

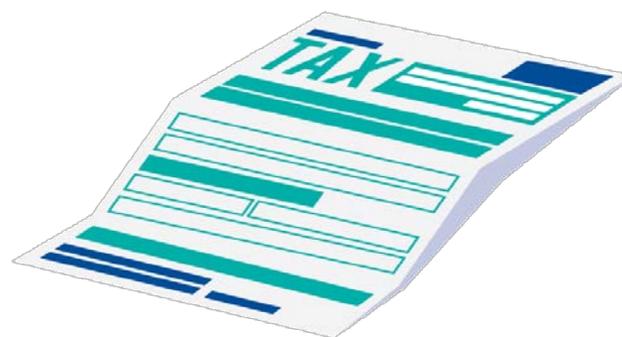
### Possibility of claiming, as of 2020, the refund of the carry-back receivables that will be recognized in 2020 as a result of losses related to the health crisis (FY closed at the latest on 31 December 2020)

- Only the following claims are concerned
  - arising from an option exercised in respect of a fiscal year ending no later than 31 December 2020 and
  - which have not been transferred to a financial institution
- This claim must be submitted no later than the deadline for filing the CIT return for the FY ending on 31 December 2020.
- For tax losses realized in 2020, the claim can be made as early as the day after the close of the fiscal year, without waiting for the final settlement of the CIT charge to allow for maximum anticipation of the refund of said receivables. As a result, companies that close their fiscal year during calendar year 2020 will benefit from cash flow support as of 2020.
- If the refunded amount exceeds by more than 20% the amount of the actual carry-back receivable, late payment interest provided and 10% penalty will be applied to the amount unduly repaid.

# Postponement of the filing of tax returns

## MDR (DAC6) reporting

- ❑ On 3 June, agreement between Member States to allow a postponement of MDR reporting deadlines
  - Measure subject to an unanimous decision of the EU Council and the release of an opinion by the European Parliament (both published respectively on 24 June and 19 June) – publication of amended Directive on 26 June 2020
  - Exchange of information between Member States are postponed until 30 April 2021
- ❑ France has decided to extend MDR reporting deadlines until
  - 28 February 2021 for existing arrangements (instead of 31 August 2020)
  - As from 1 January 2021 for arrangements implemented as from 1 July 2020



## Customs measures

### Payment facilities and measures concerning the temporary storage of goods under suspension of duties and taxes

- ❑ Possibility to claim for a deferral of payment to the customs authorities
- ❑ Specific measures applicable from 27 March until further notice
  - Goods already cleared through customs but which have not been removed yet from the '*Installations de Stockage Temporaire - IST*' (temporary storage facilities) may remain there until their final release
  - Maximum period of stay for goods placed in an IST (i.e. which have not been cleared through customs) is extended from 90 to 120 days
  - '*Opérateurs Economiques Agréés - OEA*' (qualified economic operator) are authorized to store non-EU goods under suspension of duties, taxes and trade policy measures in place not previously authorized by customs, provided they inform in advance the relevant customs office (i.e. with territorial jurisdiction) and keep compliant dedicated stock records
  - These measures may be extended to non-OEA operators on a case-by-case basis, depending on the specific circumstances, but only if the operator already holds an IST authorization

### Duty-free and tax-free importation of sanitary equipment

- ❑ This measure must still be authorized by the European Commission
- ❑ Pending such authorization, the French customs authorities allow, upon request (and subject to specific formalities to be complied with) the entry free of duty of sanitary equipment subject for the importer to commit to pay import duties and taxes if the authorization is not granted by the European Commission
- ❑ Conditions have been listed in a note issued by the customs authorities on 25 March 2020. In particular, the benefit of the exemption is not available to companies that import sanitary equipment for distribution to their staff or for their own activities

### Sea grant duties exemption on sanitary equipment

- ❑ Applicable on certain products
- ❑ To sea grant duties to be paid as from 1 April 2020 in territories where the health emergency state is in force

# Tax audits and procedures

## Future tax audits

- ❑ The statute of limitation for the French tax authorities normally expiring on 31 December 2020 is suspended until 23 August 2020
  - Statute of limitation will then start running again. As a result it will elapse on 14 June 2021
  - Applicable only for the year with a statute of limitation expiring on 31 December 2020
  - The time limits of statute of limitation expiring after 31 December 2020 are not affected by the suspension
- ❑ Suspension, during the period from 12 March until 23 August 2020, of all time limitations for conducting audit and investigation procedures in tax matters
  - Applicable to both the taxpayers and the tax authorities
  - No audit should have been initiated during the period from 12 March until 23 August 2020
- ❑ Identical provisions have been ruled for all time limitations applicable to recovery, inspections and tax rulings under the French Customs Code

## On-going tax audits

- ❑ No computation of late payment interest from 12 March until 23 June 2020

# Reduced VAT rate on masks, protective clothing and personal hygiene products

- **The products benefiting from the 5.5% reduced VAT rate will be listed by a joint order of the Ministry of the Finance and the Ministry of Health**
- **Products include**
  - ❑ masks and protective clothing adapted to prevent the spread of the virus
  - ❑ personal hygiene products adapted to prevent the spread of the virus (e.g. hydro-alcoholic solutions and products performing a similar disinfectant function)
- **Also applicable to EU supplies and acquisitions where the VAT-able event occurs between 1 March 2020 (24 March 2020 for masks and protective clothing) and 31 December 2021**
- **Retroactive application of such measures triggers practical issues such as the refund of excess output VAT during the retroactive period**

## Other tax related measures

### ■ Tax treatment of rental debt waivers granted by lessors

- ❑ For the lessor
  - Rental debt waivers related to real estate properties lease agreements are fully tax deductible
    - Conditions
      - Rental debt waivers granted to professional lessees only (not individuals) who are not considered as related parties with the lessor within the meaning of Section 39-12 of the French Tax Code
      - Rental fees waivers granted between 15 April and 31 December 2020
    - No justification required
  - Applicable to lessors closing their financial year on or after 15 April 2020 and are subject to corporate income tax or personal income tax
- ❑ For the lessee
  - Increase of the €1m ceiling available to offset tax losses by the amount of the rent waivers granted between 15 April 2020 and 31 December 2020

# Social measures



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## Postponement of deadline for payment of social security contributions

**Companies must now pay social security contributions on the normal dates.** <https://www.urssaf.fr/portail/home/actualites/toute-lactualite-employeur/mesures-exceptionnelles-pour-les.html>.

- ❑ However, if the business is unable to pay the contributions due in September due to lack of cash or the closure of the business, a tailored solution will be proposed by URSSAF. Unpaid contributions will be addressed through an amicable procedure with a view to their inclusion in a settlement plan.
- ❑ By way of exception, deferrals of employer contributions are still allowed for:
  - companies in sectors whose activities are restricted due to the measures put in place to fight the pandemic (shows, discos, festivals...);
  - employers located in Mayotte or French Guiana, due to the extension of the health state of emergency in these departments.
- ❑ The company must make a prior request to URSSAF (regardless of its size, the company wishing to benefit from the deferral must first fill out an application form using [www.urssaf.fr](http://www.urssaf.fr)).
- ❑ In the absence of a response from URSSAF within two working days following the submission of the form, the deferral request is taken to have been accepted.
- ❑ For employers located in Mayotte or French Guiana, the deferral request may also relate to the payment of the employee's share (*la part salariale*) if their cash flow does not allow them to pay it.

**Reminder: as a counterpart to the benefit of deferral claimed by “large companies” during the health crisis, said companies must have taken on a commitment to responsibility not to distribute dividends in 2020 (please refer to [Tax postponements and/or rebates \(2/2\) p. 5](#) 2020 distributions: [Commitment to responsibility required from large groups p. 6](#))**

*Please refer to [Tax postponements and/or rebates \(2/2\)2020 distributions: Commitment to responsibility required from large groups p. 6](#) and [Commitment not to be established in a non-cooperative State or territory required from large groups p. 7](#)*

**Since 1 July 2020, social security authorities (URSSAF) will start again auditing companies. It is expected that they will firstly focus on the period prior to the health crisis**

# Partial activity scheme (Decree #2020-325, 25 March 2020, Ordinance #2020-770, 24 June 2020 and Decree #2020-810, 29 June 2020)

## Partial activity scheme can be requested by businesses in exceptional circumstances (article R.5122-1 of the French Labour Code).

- ❑ If an employment contract is suspended, the employee receives a compensatory indemnity from their employer. This indemnity must be at least equal to 70% of the prior gross remuneration. It can be increased by the employer. This compensation is increased to 100% of the previous net compensation if training is provided.
- ❑ The request to use the partial activity scheme and the submission of the file is made directly online via a dedicated website: <https://activitepartielle.emploi.gouv.fr/aparts/>
- ❑ The employer must first consult with the employee representatives (CSE or staff delegates). In the absence of an IRP (employee representative body), the business must directly inform its employees about the implementation of the partial activity scheme.
- ❑ The applicable regulation states that the administrative authority normally has a maximum 15 day period to process the request (article R. 5122-4 of the French Labour Code).
  - In order not to prejudice businesses, Decree #2020-325, 25 March 2020 provides that the employer may send its request within 30 days of the placement of employees in the partial activity scheme when the request is justified due to exceptional circumstances.

## Ordinance #2020-770 of 24 June 2020, supplemented by Decree #2020-810 of 29 June 2020, stipulates that the rate of the common law allowance reimbursed to employers between 1 June and 30 September 2020 is 60% of employees' pay, up to a limit of 4.5 times the minimum wage.

- ❑ This hourly rate cannot be less than 8.03 euros.

- ❑ This minimum is not applicable in the cases mentioned in the third paragraph of article R. 5122-18 of the French Labour Code (100% compensation in case of training).
- ❑ It should be noted that this payment is limited to 1,607 hours per year and per employee, regardless of the professional branch (*la branche professionnelle*).

### Social security contributions

- ❑ The partial activity allowance paid to employees (from March until a date to be fixed by decree but no later than 31 December 2020) is considered replacement income and therefore is not subject to social security contributions. It does remain subject to the CSG and the CRDS at a combined rate of 6.7% after a deduction of 1.75%.
- ❑ If the remuneration is maintained above the threshold of 70% of gross salary, this social scheme also applies to the additional compensation paid by the employer, pursuant to a collective agreement or a unilateral decision.

### Sanctions

- ❑ The sanctions applicable for failure to comply with the partial activity scheme provisions are cumulative:
  - ❑ Full reimbursement of the allowances received as part of the partial activity scheme;
  - ❑ Prohibition on receiving public aid for employment or vocational training for a maximum of 5 years;
  - ❑ 2 years imprisonment and a €30,000 fine pursuant to article 441-6 of the French Penal Code.

# Partial activity scheme - extended beneficiaries (Ordinance #2023-346, 27 March 2020, Decree #2020-435, 16 April 2020 and Law #2020-734, 17 June 2020)

The Ordinance will remain in force until a date to be fixed by decree, but no later than 31 December 2020. The Ordinance clarifies certain details about and extends the scope of the partial activity scheme

## Protected employees ('salariés protégés')

- Partial activity scheme compulsory for any protected employee, irrespective of the employer's wishes, if it affects all the employees of the business, establishment, office or workshop to which the person concerned is assigned or attached

## Employees working a fixed number of days ('forfait jour') and employees not subject to statutory or agreed working hours

- Number of hours taken into account for the partial activity compensation and the partial activity allowance determined by converting a number of days or half days into hours

## Employees of foreign companies with no fixed place of business in France

- Partial activity scheme applicable to foreign companies with no place of business in France and which employ at least one employee working in the country who is covered by the French social security and unemployment insurance system

## Part-time employees

- Principle: the hourly rate under the partial activity scheme paid to part-time employees must not be less than the hourly rate of the SMIC
- Exception: if the part-time employee's hourly rate is less than the SMIC hourly rate, then the hourly rate paid to the employee under the partial activity scheme is equal to their actual hourly rate

## Apprenticeship and professional training contracts

- Partial hourly working allowance equal to the percentage of the SMIC applicable to them.

## Employees in training

- Terms of compensation for employees in training, during a period of partial activity, aligned with the ordinary terms of compensation for employees during a period of partial activity
- Hourly allowance paid to be equal to 80% of net pay, the terms and conditions of which are to be determined by decree

## Employees subject to the equivalence regime (professions and jobs involving period of inactivity)

- For the calculation of the compensation and the partial allowance, the paid equivalent hours are taken into account
- The duration considered to be equivalent is used instead of the legal working hours.

## Confirmation that the benefit of partial activity scheme is available for certain specific employees/business (ski resort staff, employee of public enterprises, employees working at the home of their private employer)

## Impact of partial activity scheme on rest days, paid leave and retirement rights has been specified by Law #2020-734 with an aim to avoid adverse consequences for the employees

## Law #2020-734 (and Decree #2020-926, 28 July 2020) introduced a specific regime of reduced activity for the maintenance of employment, 'l'Arme', also known as long-term partial activity or 'APLD'

- This scheme can be adopted, from 1 July 2020, by companies facing a lasting reduction in activity which is not likely however to threaten their future
- The 'ARME' is intended to apply for a limited period of time, and the collective agreement or the unilateral document must be transmitted to DIRECCTE for validation or approval on or before 30 June 2022.

## Partial activity – Adjustment of the rates

### **Ordinance #2020-770, 24 June 2020 provides for the adjustment of the hourly rate of the partial activity allowance in 3 different situations:**

- ❑ Business sectors which are covered by the rate of allowance under standard conditions, as modified since 1 June (i.e. 85% of the amount of the allowance paid by the employer to the employee, or 60% of the gross salary instead of 70%);
- ❑ Sectors identified as having been particularly affected by the Covid-19 crisis will continue to benefit from a 100% reimbursement of employee compensation (i.e. tourism, hotels, restaurants, sports, culture, air transport, events, as well as companies in related sectors which have suffered a very sharp drop in activity or sales);
- ❑ Employers whose main activity is in other sectors where customers are present at their business premises and which is interrupted as a result of the spread of the Covid-19 crisis, excluding voluntary closures (the companies in the targeted sectors will be determined in a decree to be issued shortly).

### **Decree #2020-810 of 29 June 2020 on the temporary adjustment of the hourly rate of the partial activity allowance**

- ❑ The decree sets the hourly rates of the partial activity allowance according to the 3 situations addressed by Decree #2020-770, 24 June 2020 and the relevant business sectors:
  - the sectors subject to standard conditions receive an increase in the hourly rate of the partial activity allowance to 60% of hourly remuneration (i.e. 85% paid by the State and Unédic);
  - the sectors particularly affected continue to benefit from an hourly rate of 70% of the allowance;
  - the sectors related to the sectors particularly affected also continue to benefit from an hourly rate of the allowance at 70% of hourly remuneration, provided there has been a reduction in their turnover of at least 80%.
- ❑ The decree lists the particularly affected sectors/activities (i.e. 45 in total) as well as those related to them (i.e. 41 in total).

## Partial activity scheme - Further details

### Ordinance #2020-460, 22 April 2020 contains important further information on the partial activity scheme:

- Article 5 provides that income from the partial activity scheme and the employer's supplementary allowance are subject to social security contributions when the cumulative amount is higher than 70% of 4.5 times the monthly minimum wage.
- Article 7 provides that overtime hours (over statutory working-time) are deemed non-compensable if they are provided under a collective bargaining agreement or an employment contract entered into before the entry into force of the Ordinance.
- Article 8 adjusts the conditions under which, pursuant to a collective bargaining agreement or, failing that, the Social and Economic Committee's favourable opinion, the partial activity scheme may be implemented at either (1) an individual level or (2) based on non-uniform distribution of the unworked/performed hours at an establishment, service or workshop level.

### Ordinance #2020-420, 15 April 2020 provides certain clarifications to the previous texts adopted in response to the COVID-19 crisis (applicable to partial activity between 12 March 2020 and 31 December 2020)

- The Ordinance clarifies the provisions regarding the partial activity scheme for certain groups and categories of employees such as apprentices and beneficiaries of professionalisation contracts receiving remuneration at least equal to the minimum wage and senior executives.

### Decree #2020-435, 16 April 2020 and Decree #2020-522, 5 May 2020 on emergency measures for partial activity

- The first decree clarifies the methods for calculating the indemnity and the partial activity allowance paid to employees whose working hours are counted in days, setting the rules for converting working days or half-days into hours and for those who are not subject to legal or contractual provisions relating to working hours

- The second decree specifies the methods for calculating the indemnity and the partial activity allowance, in particular for flight personnel.
- The rules applicable to civil aviation flight crews, freelance journalists, ushers' representatives, home workers paid on a piecework basis, artists, technicians and workers in the performing and recorded arts, models as well as senior executives and employees hired by an umbrella company (under a *portage salarial* arrangement) under a permanent contract are also specified by those decrees.

# Emergency measures relating to paid leave, working hours and rest days (Ordinance #2020-323, 25 March 2020)

The provisions set out below cannot be extended beyond 31 December 2020 and cannot exceed 10 days in total.

## **Paid leave**

- ❑ In-house company agreement or branch level collective bargaining agreement may set out the conditions under which the employer can require the taking of paid leave, or modify the dates of leave already scheduled, with a limit of up to 6 working days, and respecting a notice period of one clear day.
- ❑ This also applies to paid leave days accrued before the start of the period during which they will be taken.
- ❑ The agreement may authorize the employer to divide the leave without the employee's consent.

## **“RTT” (Reduced Working Time)**

- ❑ By way of exception to an agreement or collective agreement which institutes a scheme for reduced working time, the employer may impose or modify the RTT held by the employee, including those of his or her choice, subject to one clear day's notice.

## **Rest days of staff working under the ‘forfait jour’ system (fixed number of days)**

- ❑ The employer may modify or impose, subject to a notice period of one clear day, rest days (or half rest days) to employees working on a fixed-day (*forfait jour*) basis, as an exception to the collective bargaining agreement relevant to the company, establishment or branch.

## **CET (Time Savings Account)**

- ❑ Possibility of imposing the taking of days earned on the time savings account.

## **Companies operating in sectors essential to the stability of the economy and national security**

- ❑ Provisions will cease to be effective on 31 December 2020
- ❑ ‘Essential’ sectors will be specified by decree
- ❑ Working hours: derogation from public policy rules
  - Maximum daily working time increased to 12 hours (vs. 10 hours)
  - Maximum working time for night work increased to 12 hours with compensatory time-off (vs. 8 hours)
  - Daily rest period reduced to 9 hours with the possibility of compensatory time-off for overtime worked (vs. 11 hours)
  - Increase in working hours to 60 hours per week (vs. 48 hours)
  - Increase in weekly working time calculated over a period of 12 consecutive weeks to 48 hours (vs. 44 hours)
  - Increase in weekly night working hours calculated over a period of 12 consecutive weeks to 44 hours (vs. 40 hours)

The employer must inform the CSE (Social and Economic Committee) and the DIRECCTE without delay.

- ❑ Sunday rest
  - Possible to derogate from the Sunday rest rule by allocating the weekly rest in shifts
  - Applicable to companies who provide services necessary for the performance of the principal activity of those in sectors essential to the stability of the economy and national security
  - Provisions applicable in the departments of Moselle, Bas-Rhin and Haut-Rhin.

## Other social measures

### **Mandatory and voluntary profit-sharing schemes (Ordinance #2020-322, 25 March 2020 and Decree #2020-434, 16 April 2020)**

- ❑ Notwithstanding the provisions of the French Labor Code governing the payment of sums due in respect of mandatory and voluntary profit-sharing schemes and the contractual stipulations applicable in the company, the deadline for payment to beneficiaries or allocation to an employee savings plan or a blocked current account, of sums allocated in 2020 under a mandatory and voluntary profit-sharing scheme, is postponed from 1 June 2020 to 31 December 2020

### **Professional training (Ordinance #2020-387, 1 April 2020 and Decree #2020-435, 16 April 2020)**

- ❑ Extended deadline to comply with professional training obligations until 31 December 2020
- ❑ Term of apprenticeship contracts and professional training agreement extended due to the impossibility for the closing of the apprenticeship and professional training bodies

### **Overtime hours**

- ❑ When realized during the health crisis, overtime hours will be exempted from income tax and social security contributions up to an increased amount of €7,500 (instead of €5,000)

### **Exceptional bonus paid in 2020 to civil servants**

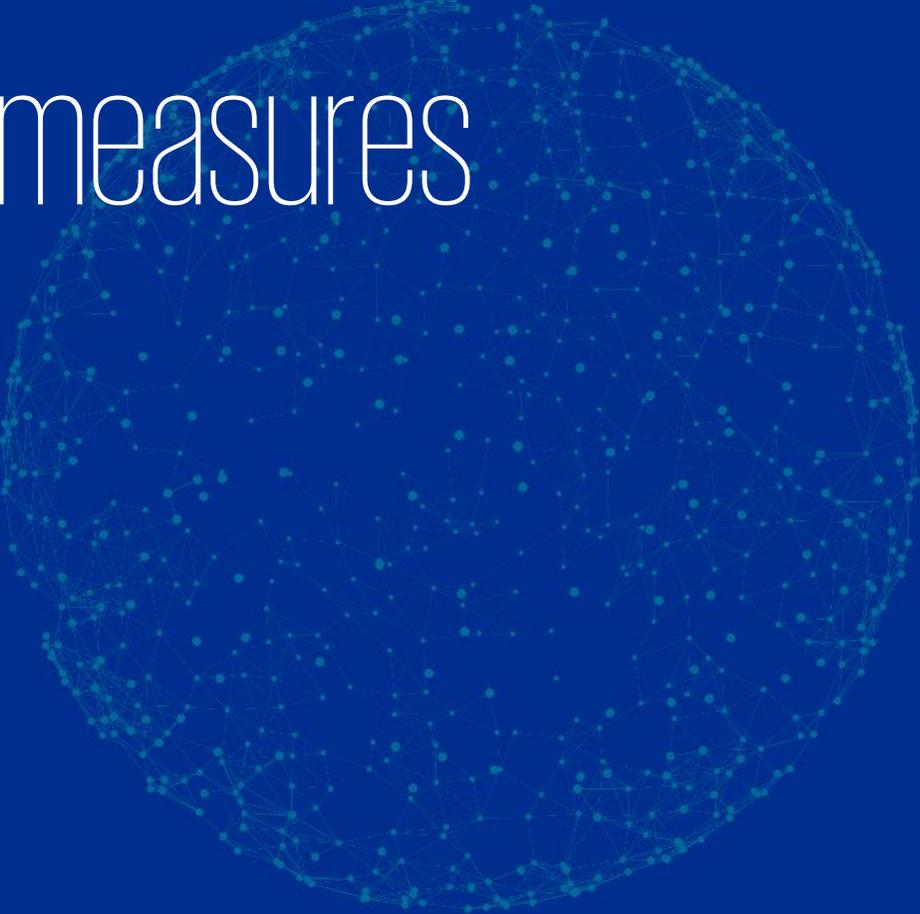
- ❑ Will be exempted from income tax and social security contributions

### **Liability of the legal representative of the companies vis-à-vis the employees (Law #2020-546, 11 May 2020)**

- ❑ Specific reference to the health crisis has been introduced in law but does not result in a waiver or as a mitigating factor of the safety obligations of the employer vis-à-vis the employees

**The 3rd Amended Finance Bill (enacted on 23 July 2020) provides for a number of social measures. In particular social security authorities are allowed to close before 31 December 2020 under specific proceedings any audit not settled before 23 March 2020 by the sending of a letter of comments ('*lettre d'observations*').**

# Legal measures



*Because of the particular context in which we are all operating, this document should be considered as a synthesis to date of the tax, social and legal measures taken by the Government regarding the Covid-19 crisis. We would also like to draw the reader's attention to the evolutionary nature of this report*

# Support in handling a conflict with a client or supplier by the Business Ombudsman

The '*Médiateur des entreprises*' (Business Ombudsman) is called upon to help businesses experiencing economic difficulties due to disputes with clients or suppliers which are caused by the consequences of the health crisis

## **Cases which can be referred to the Business Ombudsman**

- Any dispute relating to the execution of a private contract, including a tacit contract, or a public procurement contract
- Unbalanced contract terms, failure to comply with payment terms, abrupt breach of contract, misappropriation of intellectual property
- Any business or public entity, regardless of its size or industrial sector

## **Specific form to be filed to request the assistance of the *Médiateur des entreprises***

**To be noted: a Crisis Committee on Payment Terms ('*Comité de crise sur les délais de paiement*') has been set up jointly by the Ministry of Finance and the French Central Bank to identify and assess the impacts of the Covid-19 crisis on payment terms**

- Companies are invited to provide the Committee with information on payment practice of their key clients

# Holding of general assembly meetings, boards of directors and supervisory boards (Ordinance #2020-321, 25 March 2020 - Decree #2020-925, 29 July 2020)

Applicable to all legal persons and entities without legal personality under private law

Applicable to general assembly meetings that cannot be held in person for COVID-19-related health reasons.

Applicable retroactively from 12 March until 30 November 2020 (Decree #2020-925, 29 July 2020).

The Ordinance specifies that a decree shall specify, as necessary, the conditions for the application of this order

## General assembly meetings

- Adjustment of rules in respect of convening and information
  - Listed companies: a general assembly meeting is not invalid merely because it cannot be convened by postal notice due to circumstances beyond the company's control
  - All entities: a member may request that a document or other information is provided by email prior to the holding of a meeting provided that the member supplies its email address for receipt of the document or information.
  - Specific situation: formalities for convening sent before the Ordinance
    - Information of the members of the general assembly by any means that ensures they are effectively informed, at least three working days before the date of the meeting
    - No need to renew the convening formalities - Specific conditions for listed companies
- Adjustment of the rules in respect of participation and proceedings
  - The body responsible for convening a general assembly meeting may decide that the meeting will be held without the members and other persons entitled to attend, being physically present, but instead by telephone or by audiovisual conference.

- Members to be informed by any means that ensures they are effectively informed of the date and time of the general assembly meeting as well as the conditions under which they will be able to exercise the rights attached to their membership or the right to attend.
- Calculation of quorum and majorities: despite any provision of the articles of association or founding documentation, it may be decided that the members of the general assembly meeting who participate by means of telephone or audiovisual conference (allowing them to be identified) are taken to be present.
  - The technology must allow at least the transmission of the voice of the participants and satisfy technical characteristics permitting the continuous and simultaneous transmission of the proceedings.
  - Specific conditions for public limited companies and meetings of bondholders
  - Despite any provision of the articles of association or founding documentation, possibility of written consultation where permitted by law.
- These provisions apply irrespective of the subject matter of the decision on which the general assembly meeting is called upon to rule.

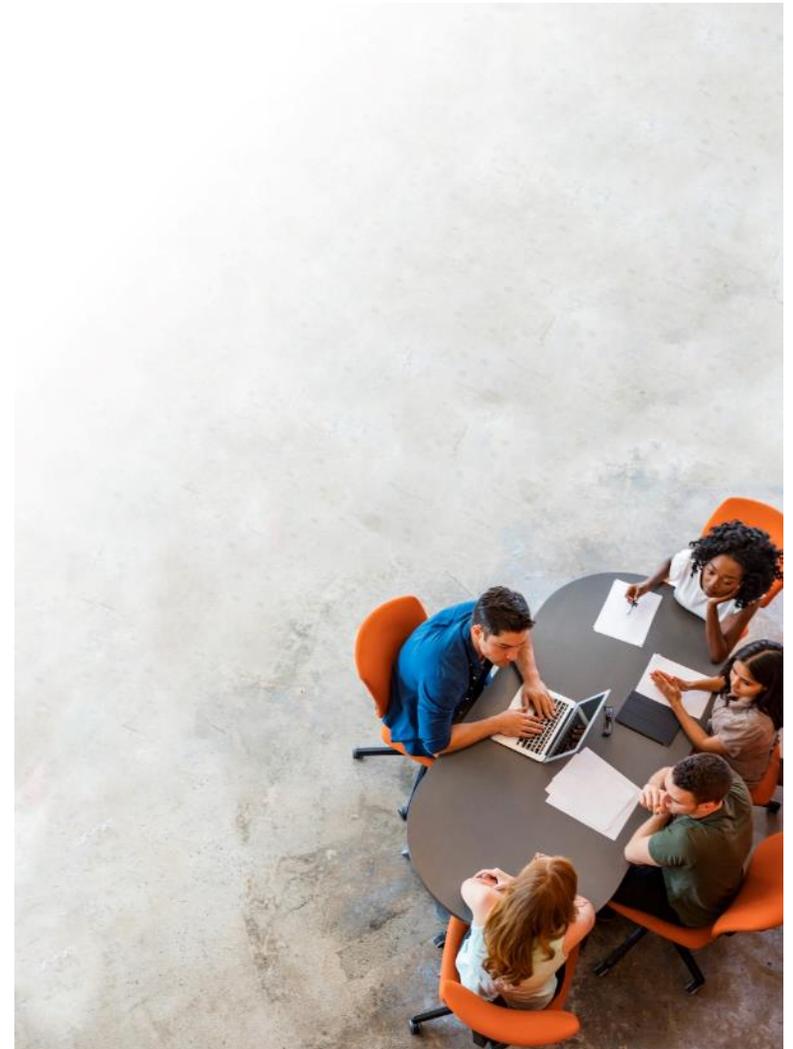
## Professional administrative, supervisory and management bodies

- Despite any provision of the articles of association or procedural rules, members of these bodies be taken to be present at the meetings of these bodies if they participate by means of telephone or by audiovisual conference such that they can be identified and their effective participation is guaranteed.

## Holding of general assembly meetings, boards of directors and supervisory boards (Ordinance #2020-321, 25 March 2020) (cont.)

### Professional administrative, supervisory and management bodies (cont.)

- ❑ The technology must allow at least the transmission of the voice of the participants and satisfy technical characteristics permitting the continuous and simultaneous transmission of the proceedings
- ❑ Despite any provision of the articles of association or procedural rules, the decisions of these bodies may be taken through written consultation of members under conditions which ensure the collegiality of the proceedings
- ❑ These provisions apply irrespective of the subject matter of the decision on which the body is called upon to rule.



# Measures relating to the closing and approval of accounts (Ordinance #2020-318, 25 March 2020)

Applicable to all legal persons and entities without legal personality under private law.

■ **Extension by 3 months of the time limit for the management board to present to the supervisory board the annual financial statements and, if applicable, the consolidated financial statements, the related management report and the report referred to in Article L. 225-68 of the French Commercial Code**

- ❑ Extension applicable to entities whose FY ends between 31 December 2019 and the ending date of a one month-period as from the end of the state of health emergency (which occurred on 10 July 2020)
- ❑ Exception: This extension does not apply to entities that have appointed a statutory auditor if the latter issued its report on the accounts before 12 March 2020

■ **Extension by 3 months of the time limits imposed by the legal provisions or the articles of association of an entity to approve the accounts and the documents attached to them, where applicable, or to convene the general assembly meeting needed to approve them**

- ❑ Exception: This extension does not apply to entities that have appointed a statutory auditor if the latter issued its report on the accounts before 12 March.2020
- ❑ Extension applicable to entities whose FY ends between 30 September 2019 and the ending date of a one month-period as from the end of the state of health emergency

■ **Extension by 3 months of the deadline imposed on private law entities benefiting from a public subsidy) to produce the financial report mentioned in the 6th paragraph of Section 10 of Law #2000-321, 12 April 2000**

- ❑ Provision applicable to financial records relating to financial years ending between 30 September 2019 and the ending date of a one month-period as from the end of the state of health emergency

■ **Extension by 2 months, counted from the end of the FY, of the time limit given to the liquidator to prepare the annual accounts and the related report**

- ❑ Extension applicable to entities whose FY ends between 31 December 2019 and the ending date of a one month-period as from the end of the state of health emergency.

# Measures related to restructuring and insolvency procedures (Ordinance #2020-341, 27 March 2020 as amended by Ordinance # 2020-596, 20 May 2020)

Ordinance applicable to ongoing procedures.

## **Declaration of insolvency**

- During the whole period of health emergency state until 23 August 2020 is assessed on the basis of the financial situation of the debtor at the date of 12 March 2020
- Officers of the bankruptcy proceedings can ask for the declaration to be postponed

## **Requests of payment of wages before the AGS (public body guarantying the payment of wages to employees of insolvent companies)**

- Statements of wages to be paid submitted in a 10-day or a 3-month period depending on the nature of the amounts to be paid
- Possibility to manage information process to staff representatives after submission of the request Conciliation procedure

## **Conciliation procedure**

- Can be extended for a period up to 5 months after the end of the health emergency state

## **Safeguard plan and restructuring plans**

- Until 23 August 2020,
  - Duration can be extended by a 5 month-period at the request of the judge (extended period of up to one year at the request of the public prosecutor)
  - Upon request of the parties, possibility for the President of the Commercial court to postpone all the deadlines applicable to the various bodies to the procedures by a 5 month-period
- Within a 6-month period as from 23 August, at the request of the judge or the public prosecutor, duration of the plans can be extended by the Commercial Court by a period up to one year.

- Until 31 December 2020, safeguard plan and restructuring plans can be extended by a period up to 2 years at the request of the judge or the public prosecutor resulting in a duration up to 12 years in total

## **Procedural deadlines are amended to facilitate restructuring and insolvency procedures**

- Flexibility has also been introduced until 31 December 2020 to facilitate restructuring plans which include disposal of assets/business with a view to reduce the dismissal of employees

## Other measures

### Recognition of the coronavirus by the French State as an event of force majeure for its public procurement agreements

For all State public procurement contracts, penalties for delays will not be applied

### Restructuring plan for debts with the support of the State and Banque de France (French Central Bank)

The Commission of chief financial services (Commission des chefs de services financiers or CCSF) can grant companies payment deadlines to pay their tax and social security debts (employer's share) in complete confidentiality

### Bpifrance implements exceptional measures to support affected Very Small Enterprises ("VSEs") and Small and Medium Size Enterprises ("SMEs")

- ❑ Guarantee from Bpifrance for up to 90% of bank loans amounts with a term of 3 to 7 years and up to 90% of bank overdrafts if confirmed by the bank for 12 to 18 months
- ❑ Extension without fees of usual guarantees for investment loans to accompany the adjustments made by the banks
- ❑ Adjustments of medium and long term loans granted by Bpifrance to its clients, upon request and depending on the context
- ❑ Creation of "Atout Loan"
  - Eligible companies: VSEs, SMEs and Intermediate Sized Enterprises ("ETIs") going through difficulties related to coronavirus with minimum 12 months of activity
  - All sectors of activity except civil real estate companies (SCI), financial intermediation firms, agricultural business entities with a turnover of less than €750k or under bankruptcy proceedings

- Loan to finance a one-time cash requirement or an exceptional increase in working capital requirement linked to the economic situation
- Loan amount from €50k to €5m for SMEs to €30m for ETIs
- No guarantee on the assets of the company or its director
- 3 to 5 years duration with deferred capital depreciation for up to 12 months (quarterly maturity)
- Fixed or variable interest rate

- ❑ As a counterpart, "big companies" must take on a commitment to responsibility not to distribute dividends in 2020 (*please refer to [Tax postponements and/or rebates \(2/2\) p. 5](#)*)

### Measures related to exportation

- ❑ Extended security and pre-financing conditions granted by Bpifrance

### Specific measures to the Tourism industry (Ordinance #2020-315, 25 March 2020)

- ❑ Measures applicable to travel contracts and travel services contracts and in particular accommodation, car rental and any other tourist service that is not an integral part of a travel offer.
- ❑ Measures not applicable to sale of transport tickets governed by international and European Union law
- ❑ Full refund or credit note (refundable after a 18-month period under specific conditions) of contracts which have not been executed
- ❑ Announcements by the EU Commission on 13 May 2020 may have an impact on the measures taken by the French Government namely on the credit note system

## Other measures (cont.)

### Specific measures to public contracts (Ordinance #2020-319, 25 March 2020 – Decree #2020-893, 22 July 2020)

- ❑ Applicable to public contracts in force or concluded between 12 March 2020 and the end of a 2-month period after the end of the health crisis
- ❑ Contracts terminated during this period can be extended if competitive proceedings cannot be organized
- ❑ Specific measures in case of difficulties to execute the contract
- ❑ Indirect impact of Ordinance #2020-560, 13 May 2020 relating to deadlines computation
- ❑ Possibility to conclude public contracts without an auction process when amounts at stake do not exceed €70k excl. taxes

### Creation of a solidarity fund (Ordinance #2020-317, 25 March 2020 and Decree #2020-371, 30 March 2020 as amended by Decree #2020-394, 2 April 2020 and Decree #2020-433, 15 April 2020)

Solidarity fund for micro-businesses particularly affected by the economic, financial and social consequences of the epidemic, and the measures taken to limit its spread

- ❑ The fund has a 3 month term, extendable by decree for a maximum of 3 months
- ❑ State-funded
  - May also be funded on a voluntary basis by the regions, the overseas collectivities and New Caledonia and any other territorial collectivity or public establishment for inter-communal cooperation with its own tax system
- ❑ Available for micro-business under restrictive conditions such as
  - Maximum 10 employees
  - Revenue (excl. VAT) not exceeding €1m
  - Not subject to an insolvency proceeding as at 1 March 2020

- ❑ Allowance of 1,500€ to be requested before 30 April 2020 (may be increased, subject to specific conditions, by 5,000€ in case of employees)
- ❑ Allowance exempted from income tax, corporate income tax and social security contributions

### Payment of rental, water, gas and electricity bills for commercial premises for micro-businesses (Ordinance #2020-316, 25 March 2020)

- ❑ Applicable to micro-businesses whose activity is affected by the Covid-19 crisis
  - Micro-business (within the meaning of Decree #2008-1354, 18 December 2008) which employ less than 10 people and have annual revenue or balance sheet value not exceeding €2m
  - Natural and legal persons governed by private law engaged in an economic activity who are likely to benefit from the solidarity fund provided for by the Ordinance #2020-317) or, subject to specific conditions, who continue to operate their business in the framework of pre-insolvency or insolvency proceedings
- ❑ A decree will set up the eligibility criteria for these provisions and, in particular, the threshold for loss of turnover due to the health crisis

### State-granted loans (Amended Finance Bill for 2020, Law #2020-473, 25 April 2020)

- ❑ Possibility for certain companies, which will be defined by forthcoming decree, to benefit from State-granted loans when they have not benefited from State-guaranteed loans

# Contacts

**Mustapha Oussedrat**

*Tax Senior Partner*

[moussedrat@kpmgavocats.fr](mailto:moussedrat@kpmgavocats.fr)

**Christophe Bergerot**

*Partner, Head of tax*

[christophebergerot@kpmgavocats.fr](mailto:christophebergerot@kpmgavocats.fr)

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