

## NEWSLETTER – APRIL 2020

BUSINESS, SOCIAL & TAX LAW

### Overview of the measures adopted to support business activity due to the COVID-19 outbreak

The measures adopted to restrain the spread of the coronavirus in Switzerland have continuously strengthened since the end of February 2020, leading to a slackening of business activity. All businesses need to adapt to this extraordinary environment and optimize their expenses in the context of a reduced (or the absence of) income. Facing these unexpected challenges, the Swiss Federal Council issued – and will continue to issue – several ordinances which aim at supporting all economic actors. Please find below an overview of the main measures which should allow all businesses to mitigate the economic impact of the COVID-19 outbreak and to ensure the continuity of their business activity.

#### I. BUSINESS LAW

##### 1. Stay of all debt enforcement proceedings

All debt enforcement proceedings are stayed from March 19 to April 4, 2020. As a consequence, **no debt enforcement action** can be performed by the enforcement authorities (such as the debt enforcement offices) against a debtor during this period. This being said, creditors shall continue to take action against debtors in order to preserve their rights.

##### 2. Bridge loan guarantees

A program for **secured bridge loans** was introduced to support enterprises facing a liquidity shortage. A company may request from one of the recognized institutions to guarantee a loan solicited from a bank. The amount of the loan cannot exceed 10% of the annual turnover, up to a maximum amount of CHF 20 million. **All sole proprietorship, partnership or legal entity** with a registered seat in Switzerland may apply, provided that (i) it was established before March 1, 2020; (ii) it is not in bankruptcy, composition proceedings or liquidation; (iii) it is economically substantially affected by the COVID-19 outbreak; (iv) it has not obtained any other liquidity guarantee from the Swiss government in the area of culture or sport; and (v) its annual turnover does not exceed a threshold of CHF 500 million. The process of grant, the scope of the guarantee and the interest rate differ

depending on the amount of the loan, i.e. if it is below or above CHF 500'000. A request for said bridge loan may be filed **until July 31, 2020**. A budget of CHF 20 billion (amount which should be increased in the next couple of days) was approved in order to cover all potential losses from the recognized guaranteeing institutions.

##### 3. Extension of the notice period for lease agreements

The Swiss Federal Council decided to **extend the minimum deadline granted to a tenant**, put on formal notice for late payment, to pay its rent or ancillary charges due from March 13 to May 31, 2020, before the landlord may terminate the lease. Such late payment shall be due to the measures ordered by the authorities to restrain the spread of the coronavirus. For leases related to residential or commercial premises, the minimum deadline of 30 days as provided by art. 257d al.1 CO is extended to **90 days**.

This measure does not entail a right for a tenant of residential or commercial premises to suspend the payment of its rent. Also, it is recommended at this stage to negotiate with the landlord an extended period of time for the payment of the rent or even a discount in case of financial difficulties.

A task force consisting of representatives of the real estate industry was set up on March 24, 2020, by the

Swiss Federal Council. Such task force will present additional measures in this area if necessary.

#### 4. Upholding of contractual obligations

The COVID-19 outbreak does not systematically suspend the binding effect of a contractual obligation. This being said, when a commercial agreement represents a significant cost for a company, a **review of its provisions** may be considered appropriate to assess the possibility to suspend, or even terminate, said contract.

#### 5. Holding virtual general meetings

General meetings of companies cannot be held in person due to the ban of any public or private event until April 19, 2020. As a consequence, and in order to ensure that general meetings may still be held, the shareholders can now (i) **vote in writing or electronically** or (ii) **be represented by an independent proxy**. The shareholders shall be informed at least 4 days before the meeting.

## II. SOCIAL LAW

#### 1. Simplified access to short-time work compensation

In order to mitigate the cost of wages in companies impacted by a decrease of business activity, exceptional measures have been adopted in relation to **short-time work**. The application process has been considerably simplified. The notice and waiting periods applicable before being entitled to receive indemnities are entirely waived. The maximum time period during which a short-time work can be authorized is extended, from 3 to 6 months. The entitlement to short-time work compensation is **extended to categories of employees who were excluded** from its original scope. For example, persons who hold a position assimilated to employers are now eligible to a lump sum compensation of CHF 3'320 per month for a full-time job. Other eligible employees receive a compensation equal to 80% of the loss of earnings (capped at CHF 12'350 per month) due to the reduction of working hours.

#### 2. Daily allowances for loss of earnings

The Swiss Federal Council decided to allocate to **self-employed persons** a compensation for loss of earnings provided that: (i) they suffer a loss of earnings due to a measure adopted by the Swiss Federal Council in order to restrain the spread of the coronavirus (closure of their business; closure of schools or obligation to take care of children up to the age of 12; or quarantine ordered by a doctor) and (ii) they do not receive any other compensation. A 3-days waiting period applies when compensation is solicited because of childcare. **The daily allowances correspond to 80% of the loss of earnings**, which is

capped at CHF 196 per day. The number of daily allowances depends on the underlying cause of the business interruption, i.e. a quarantine (10 days) or childcare (30 days). In the event of a business closure, the right to compensation will end when the measures of the Swiss Federal Council are waived.

The Swiss Federal Council requested on April 1, 2020, from its administration and the SECO to define new measures for self-employed persons who do not meet the above-mentioned requirements.

#### 3. Deferral of the payment of social security contributions

The payment of social security contributions (old-age, invalidity, loss of earnings, unemployment insurance) may be, **temporarily and without default interest, deferred** for enterprises and self-employed persons financially impacted by the COVID-19 outbreak. The **usual amount of advance payments** for these contributions may be also adjusted in the case of a significant decrease of the total payroll. Each compensation fund will review the corresponding request from their members.

#### 4. Access to the employer's contributions reserves

Employers may **access to their contributions reserves** for pension funds (LPP) in order to pay the employee's contributions when they are facing a liquidity shortage.

## III. TAX LAW

#### 1. No interest charges

From March 20 to December 31, 2020, the Swiss government **waives to charge any default interest** in case of late payments of certain taxes (VAT and special consumption taxes), incentive taxes or custom duties, except for withholding and stamp taxes which are out of the scope of such measure.

From March 1 to December 31, 2020, **no default interest** is charged in case of late payment of direct federal taxes. This measure includes all outstanding amount (except fines and costs) owed by individual persons or legal entities to the tax authorities to be due during this period of time, regardless of the relevant fiscal year.

Similar measures were adopted at a cantonal level. In the canton of Geneva, **negative compensatory interests and default interests are suspended** for all periodical cantonal and local taxes for individual persons and legal entities from March 24 to December 31, 2020, regardless of the relevant fiscal year. For instance, default interests due on late or missing payment of tax installments for the fiscal year 2020 are typically concerned by such measure.

## 2. Deadline extension for filing obligations

In the canton of Geneva, the deadlines to file income tax returns for ordinary taxpayers, self-employed persons and legal entities and to request rectification of any withholding tax are **extended to May 31, 2020**. If an extended deadline was already granted to the taxpayer, it is still valid and the corresponding fee will not be charged.

## 3. Revised 2020 tax installments

When a significant decrease of turnover or income is expected, the cantonal tax administration of Geneva allows individual taxpayers and legal entities to **adjust**

**their tax installments for year 2020** without any formality, i.e. without sending a request to the tax administration. Indeed, no default interests will be charged and no payment reminder will be sent to the taxpayers in relation to such tax installments.

## 4. Flexible enforcement of federal law provisions

In the context of the current health crisis, the Swiss federal tax administration indicated that it would apply with a certain flexibility the relevant provisions of federal law relating to **payment facilities** and the **restitution of a claim deadline**.

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The content of this newsletter is of a general nature and can in no way be assimilated to a legal or tax opinion. If you wish to obtain an opinion on a particular situation, do not hesitate to contact one of the following lawyers:

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