

**24 March 2020**

## **COVID-19 and tax crisis management**

In the stream of urgent issues to be dealt with in the current situation, where all the usual processes and practices are questioned, and where the uppermost priority is to put people first, it is often difficult to step back and identify exactly what tax actions need to be taken on a day-to-day basis. Tax matters, like many others, are open to more or less accurate rumors and interpretations. They are also subject to daily changes.

In order to help you to assess the situation as quickly as possible, Baker McKenzie, both in Paris and throughout its network, has set up working groups to monitor tax developments and to share our expertise on the many tax issues that may arise.

On this basis, we thought it would be useful to share with you, in the form of a "checklist", an initial inventory of the questions raised to date. In case of doubt or urgency, it will enable you to quickly identify the subject(s) to be dealt with in the short, medium and long term, and to identify the right contacts.

More than ever, our teams are mobilized by your side to help you answering these questions and meet together the exceptional challenges that the situation imposes.

This tax checklist is bound to evolve over time. Please do not hesitate to contact us in order to discuss these issues on a regular basis.

### **Corporate income tax and registration fee**

In the current context, an essential issue for companies is to maximize free cash flow by using all available means. In this regard, the announcements made last week by Minister Gérald Darmanin raise certain questions:

- Should an extension of the deadline for filing tax returns be anticipated?
- Can corporate income tax instalments be reduced or can their payments be suspended? Can tax instalments already paid be refunded?

- Can tax credits and possible tax overpayments be subject to an early reimbursement?
- In case of serious difficulty, is it possible to obtain an exceptional corporate income tax rebate?
- How to proceed with the tax registration of contracts and legal transactions within the applicable time limit?

### Tax audits and litigation

Practical issues are currently arising in relation to ongoing tax proceedings:

- In the event of an ongoing tax audit, is this one maintained? Can the French Tax Authorities force a taxpayer to maintain a tax audit meeting? What are the best practices to be implemented in this context?
- What to do when deadlines are about to expire (e.g. payment obligations after the receipt of a formal notice, time limits for lodging an appeal, completion of the examination process ...)?

### VAT, indirect taxes, customs duties and other taxes on goods and services

Many practical questions arise concerning the payment of (i) taxes on a monthly basis (monthly VAT) or in connection with more exceptional transactions (e.g. an ongoing property purchase), (ii) import duties and taxes on goods to be delivered soon or that will be released from the tax or customs warehouses where they are stored, (iii) excise duties and other indirect contributions on goods stored in tax warehouses and which should be removed from them.

Some of them concern directly the **cash management**:

- How to improve "tax" collection? Can you for example speed up refund claims of pending VAT credits?
- Conversely, how can cash out flows be reduced: applying for deferral of payments? Implementing reverse charge mechanisms (payment without actual cash outflow)? Can you use o VAT-free purchasing procedures for exporters, etc.?

### International taxation and transfer pricing

- Anticipating the effects of the current crisis on the existing transfer pricing policies

For groups using a **transactional net margin method**, the points to be validated include: Should the profits of distributing subsidiaries in the markets most affected by COVID-19 continue to be guaranteed? What about manufacturing sites operating below capacity? Will the benchmarks require adjustment to take into account the extraordinary circumstances of the year 2020?

For companies that use the **profit-split method**, determining how to implement a loss split ; How will French and local tax administrations respond? Should the same allocation keys (e.g. revenue) be used for both profit and loss splits?

Checking whether intra-group **royalty** contracts provide for caps based on licensees' profitability.

Defining the principles for allocating **restructuring costs and exceptional expenses**.

In the event of a recent or ongoing transfer of intangible assets, consider whether there is a need to adjust the **valuation of intangible assets** or profit potential; Is there a risk that the concept of intangible assets with a highly uncertain value may be used in order to challenge valuations made in recent months?

Should the financial market turmoil be reflected in the remuneration of **intra-group financing** established in 2020 and if so how?

Should state stimulus packages and other governmental interventions be taken into account and if so how?

- Checking the possible impact on **Advance Pricing Agreements (APAs)**.

How are APAs in force within the group drafted, including critical assumptions clauses? Does their wording allow a company or a tax administration to challenge a concluded APA?

What precautions should be taken in the context of APAs that are currently under negotiation?

- Anticipating the impact on **transfer pricing hallmarks / DAC 6**, in particular with regard to the hallmark relating to the reduction of profits by more than 50% following a business restructuring.
- Ensuring that the current widespread use of teleworking does not trigger new permanent establishment risks.
- Finally, we draw your attention to the fact that USCIB, representing the US business community, has written to the US Treasury requesting the postponement of the OECD work on the Unified Approach.

### **Individuals taxpayers, obligations of employers and other intermediaries**

- Should an extension of the deadlines for filing tax returns be expected in hard copy for (i) the 3% real estate wealth tax, (ii) non-resident real estate wealth tax, (iii) trusts (annual and event-related declarations), (iv) income of first-time filers (e.g. an impatriate employee who transferred his tax residence to France in 2019)?
- For the E-filing tax returns should a postponement of professional tax returns for non-commercial profits, industrial and commercial profits, agricultural profits be expected?
- Also, should a postponement of annual tax returns and of real estate wealth tax returns be expected?
- An exemption from **penalties** for the declaration of withholding tax paid on remuneration to a non-tax resident of France (article 182 A of the French Tax Code)?

Benefiting from specific modalities for **postponing or modulating** the wage withholding tax or income tax advances for self-employed workers and entrepreneurs?

- With regard to cross-border workers (particularly in Germany, Switzerland, Luxembourg) who are confined to their home as part of the measures to combat the spread of the COVID-19, measures have been taken in order to factor in the home confinement on the specific tax regime provided for in the applicable tax treaty.
- Finally, regarding the taxation of **wage income**, excluding the bonuses to employees for activities maintained for necessity, should specific tax measures be expected for an

exceptional wage complement that would be paid to an employee in 2020 to compensate for a decrease in wages due to a situation of part-time unemployment, or to cover an exceptional personal expense of the employee directly related to the COVID-19 (e.g. medical expenses, childcare expenses)?

- Payments deferrals of profit-sharing and incentive bonuses (due within 5 months of the end of finance year) are expected, as well as for the freezing decisions made by the employees.

## Contact us

### Transfer Pricing:

Caroline Silberstein, Principal, [Caroline.Silberstein@bakermckenzie.com](mailto:Caroline.Silberstein@bakermckenzie.com)

Lionel Ochs, Senior counsel, [Lionel.Ochs@bakermckenzie.com](mailto:Lionel.Ochs@bakermckenzie.com)

Laura Nguyen-Lapierre, Counsel, [Laura.Nguyen-Lapierre@bakermckenzie.com](mailto:Laura.Nguyen-Lapierre@bakermckenzie.com)

### Corporate Tax:

Véronique Millischer, Principal, [Veronique.Millischer@bakermckenzie.com](mailto:Veronique.Millischer@bakermckenzie.com)

Guillaume Le Camus, Principal, [Guillaume.LeCamus@bakermckenzie.com](mailto:Guillaume.LeCamus@bakermckenzie.com)

Edouard De Rancher, Partner, [Edouard.DeRancher@bakermckenzie.com](mailto:Edouard.DeRancher@bakermckenzie.com)

Stéphane Taieb, Partner, [Stephane.Taieb@bakermckenzie.com](mailto:Stephane.Taieb@bakermckenzie.com)

Charles Baudoin, Counsel, [Charles.Baudoin@bakermckenzie.com](mailto:Charles.Baudoin@bakermckenzie.com)

### VAT:

Thierry Vialaneix, Senior counsel, [Thierry.Vialaneix@bakermckenzie.com](mailto:Thierry.Vialaneix@bakermckenzie.com)

### Litigation:

Eric Meier, Principal, [Eric.Meier@bakermckenzie.com](mailto:Eric.Meier@bakermckenzie.com)

Régis Torlet, Senior counsel, [Regis.Torlet@bakermckenzie.com](mailto:Regis.Torlet@bakermckenzie.com)

Ariane Calloud, Partner, [Ariane.Calloud@bakermckenzie.com](mailto:Ariane.Calloud@bakermckenzie.com)

### Private tax:

Agnès Charpenet, Partner, [Agnès.Charpenet@bakermckenzie.com](mailto:Agnès.Charpenet@bakermckenzie.com)

Geoffrey Poras, Counsel, [Geoffrey.Poras@bakermckenzie.com](mailto:Geoffrey.Poras@bakermckenzie.com)

### Real Estate Tax:

Virginie Louvigné, Partner, [Virginie.Louvigne@bakermckenzie.com](mailto:Virginie.Louvigne@bakermckenzie.com)

### And:

Iris Bouffartigue, Professional support lawyer, [Iris.Bouffartigue@bakermckenzie.com](mailto:Iris.Bouffartigue@bakermckenzie.com)