

France's Emergency Package

Coronavirus/COVID-19 Update

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One Manhattan West
New York, NY 10001
212.735.3000

68, rue du Faubourg
Saint-Honoré 75008
75008 Paris, France

France's Emergency Package in Response to the COVID-19 Pandemic

On March 18, 2020, the French government published a legislative package of emergency measures aimed at tackling the COVID-19 crisis. It includes an Amending Finance Act for 2020 (which includes a state guarantee of up to €300 billion to secure the repayment of loans made by banks between March 16, 2020, and December 31, 2020), a bill providing for certain emergency measures and a bill extending the review period for priority preliminary rulings on the issue of constitutionality, which are being rushed through Parliament under an emergency procedure. Parliament voted the Amending Finance Act into law on March 20, 2020, and is expected to review, approve and formally adopt the rest of the package as early as March 22, 2020. In addition, the government separately announced an array of measures aimed at helping taxpayers.

Amending Finance Act for 2020

The Amending Finance Act for 2020 aims to adjust France's budget to the new circumstances, in particular by appropriating new funds and by redeploying resources previously earmarked for other uses in order to face the challenges presented by the developing COVID-19 pandemic, and the resulting economic and social difficulties.

The most noteworthy measure establishes a state guarantee of up to €300 billion to secure the repayment of loans made by banks between March 16, 2020, and December 31, 2020, which should provide a cash bridge to French businesses. In order to ensure that the guarantee will directly benefit businesses facing difficulties arising from the current crisis, the loans eligible for the guarantee will need to satisfy certain conditions, yet be specified by ministerial decree. Such conditions will require, in particular, that the amortization of the loans be deferred by at least one year, that the borrower, at its discretion, be allowed to elect a five-year maturity extension and that the lender not reduce the amount of its commitment at the date the guarantee is granted compared to what its level was as of March 16, 2020. Loans to businesses in receivership are not eligible for the guarantee.

In order to facilitate and expedite the deployment of the guarantee, all eligible loans to businesses with fewer than 5,000 employees or with revenues not exceeding €1.5 billion will automatically be secured upon notification by the borrower to Bpifrance Finance-ment SA, France's state-backed investment bank. Regarding loans to larger businesses, a ministerial decree will be required.

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Emergency Bill To Combat the COVID-19 Crisis

The bill providing for emergency measures addresses numerous urgent matters, including postponing the second round of the municipal elections to June 2020 and declaring a public health state of emergency. In the economic realm, the main provision of this piece of legislation would allow the government to adopt, through ordinances (ordonnances) as opposed to laws passed by Parliament, measures aimed at limiting business failures and layoffs, whether the persons concerned are incorporated or incorporated enterprises, employees or independent workers.

The authority to be vested in the government is very broad and would in particular include:

- **Cash flow support:** direct or indirect financial help for businesses facing significant hardship and whose survival is at stake, as well as the creation of a solidarity fund that will be financed jointly by the state and the French regions;
- **Employment law:** measures limiting layoffs by:
 - facilitating part-time work;
 - granting certain subsidies and benefits in case of exceptional and substantial health risks;
 - adapting the rules under which workers accrue and use paid vacation days by providing greater discretion to employers;
 - introducing exemptions to the labor legislation on maximum working time for companies operating in certain sectors deemed particularly necessary for the safety of the country, its economy and its people;
 - adapting the rules under which works councils (comités sociaux et économiques) carry out their duties, in particular by reducing the time period they are granted to opine on matters referred to them;
- **Contractual relationships:** measures amending the contractual obligations that businesses in the private sector owe to their clients and suppliers, in particular with respect to payment terms and penalties. The bill particularly references the travel and hospitality industry and includes provisions for public procurement contracts broadly similar to those applicable to the private sector;
- **Bankruptcy law:** measures adapting bankruptcy rules and related regulations in order to prevent the failure of businesses during the public health crisis;
- **Evictions:** measures amending eviction rules for tenants by extending the time period during which landlords are not allowed to request the eviction of their tenants;
- **Payment of rent or utility bills:** measures postponing or spreading over time the payment of rent, gas, electricity or water bills relating to business premises, and suspending financial penalties or sanctions reducing the supply of such services for default of payment. This measure would only benefit very small enterprises threatened by the pandemic.

Other measures relate to the functioning of the administration and the courts, giving the government extensive powers to adjust the rules to the new circumstances, in particular by:

- amending the time periods provided for the filing or review of declarations and requests, with or by public agencies or bodies, public consultations and related matters;
- amending, suspending, tolling or reporting certain statutes of limitations or time periods prescribed for certain administrative procedures, for a period of up to three months from March 12, 2020;
- adjusting, but only to the extent required to limit the propagation of the COVID-19 virus, the rules governing the activity, makeup and territorial jurisdiction of judicial and administrative courts (other than criminal courts);
- adjusting certain aspects of criminal procedure to take into consideration the threats created by the COVID-19 virus (including, for instance, allowing attorneys to appear via video conference or other means to assist persons held in custody).

In a similar vein, the government is tasked with relaxing certain rules under which the managing bodies of private and public legal persons operate, including shareholder meetings or meetings of board of directors and similar bodies. The rules governing the preparation, auditing and approval of financial statements and the declaration of dividends may also be amended.

Bill for Extending the Review Period in Certain Constitutional Matters

The third component of the legislative package presented by the government has a narrower and more technical scope and relates to “priority preliminary rulings on the issue of constitutionality” (so-called QPCs). In proceedings before a court, an applicant can raise the question by way of a QPC as to whether a legislative provision violates the rights and freedoms guaranteed by the French Constitution; under certain conditions, this question is then referred to the Conseil d’État or the Cour de Cassation, which may, within three months, refer it to the Conseil Constitutionnel, which, in turn, has three months to conduct its review and rule on the matter. In light of the present circumstances, which hinder the ability of these three courts to convene and consider the applications referred to them, the three-month review periods mentioned above would be suspended until June 30, 2020.

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Separate Tax Measures

Separately from the legislative package, the government has announced a series of tax measures aimed at helping taxpayers keep their cash flows even during this public health crisis:

- **Allowing taxpayers to postpone or reduce the tax payments they are required to make.** Deadlines for the payment of direct tax installments without penalty have been postponed, including those due in March 2020. Chief among the tax charges that can be postponed are the corporate income tax advance payment and the wage tax charges. In practice, businesses (or the accountants who manage their tax affairs) who wish to apply for a deferral of their tax payments must fill out a form made available by the French tax authorities and send it to their local tax office. Those who already paid the installments due in March 2020 are allowed to have their bank reject the SEPA debit corresponding to this payment, if technically still feasible, or otherwise apply for a refund from their tax office once the payment has been debited from their account. The payment of real property taxes, such as the cotisation foncière des entreprises (a component of the business tax paid by incorporated and unincorporated businesses) and the taxe foncière, which are generally paid by way of monthly installments, can be suspended; the taxpayer only need elect this option via their online account on the tax authorities' platform (<https://www.impots.gouv.fr/portail/>). Independent workers can also adjust the amount of the tax payments they are required to make under the pay-as-you-earn system (prélèvement à la source).

For businesses who face significant hardship, further tax and social security contribution deferrals can be obtained by applying for a suspension with the Commission des Chefs de Services Financiers (CCSF). In the most serious situations, an outright reduction in or cancellation of the taxpayer's outstanding tax debt may be granted on a case-by-case basis; the applicable form to be submitted can be found at <https://www.impots.gouv.fr/portail/node/13465>. It should be noted, however, that none of these measures apply to VAT.

- **Accelerating cash refunds to taxpayers.** Guidelines have been given by the government to the French tax authorities to refund companies the tax credits to which they are entitled on an expedited basis, as fast as the tax administration is able (e.g., VAT credits and R&D credits).
- **Allowing taxpayers to focus on the most pressing issues facing their business operations.** French Budget Minister G erald Darmanin has stated that tax audits would be suspended until further notice for industries directly impacted by the crisis. This will allow them to devote all their energy to the survival of their business.

It is likely that other tax measures will follow. In particular, the government may adopt in the coming weeks an extension of the rules for carrying back net operating losses to previous years (which would allow taxpayers to obtain a refund of corporate tax paid in such previous years).

Contacts

Arash Attar-Rezvani

Partner / Paris
33.1.55.27.11.27
arash.attar@skadden.com

Pascal Bine

Partner / Paris
33.1.55.27.11.01
pascal.bine@skadden.com

Armand W. Grumberg

Partner / Brussels
33.1.55.27.11.95
armand.grumberg@skadden.com

Thomas Perrot

Partner / Paris
33.1.55.27.11.86
thomas.perrot@skadden.com

Philippe Despres

Of Counsel / Paris
33.1.55.27.11.56
philippe.despres@skadden.com

Valentin Autret

Counsel / Paris
33.1.55.27.11.11
valentin.autret@skadden.com