

# Legal briefing – The impact of Covid-19 on businesses Initial support measures adopted by the Government (20 March 2020)

## I. The situation created by Covid-19

The health crisis linked to the spread of Covid 19 and the restrictive measures taken by the public authorities to stop the spread of this virus have had a violent impact on all sectors of companies.

Brucher Thieltgen & Partners gives you here some answers to the urgent questions which arise in various sectors of the economy.

## II. Business issues, points of attention and solutions

The current situation due to confinement, restricted travel, closed industries and slower economic life raises a number of questions, in particular with regard to fiscal measures, partial unemployment linked to the corona virus, teleworking for cross-border workers, etc.

A series of measures to guarantee the continuity of the Luxembourg economy, maintain employment and avoid layoffs have been put in place.

### II.1. Support measures for companies established in Luxembourg

There is a wide range of financial aid schemes available to businesses established in the Grand Duchy, both for promoting the creation of businesses and for the development and diversification of their operations. In principle, all of the aid schemes for businesses offered by the Ministry of the Economy remain applicable; full details are available on the Guichet.lu Business Portal.

Some of these aid schemes administered by the Ministry of the Economy's General Directorate for Small and Medium-Sized Undertakings are aimed solely at SMUs. Businesses impacted by the coronavirus may be eligible for aid under these schemes.

Businesses experiencing cashflow problems may contact one of the mutual insurance schemes (Mutualité de Cautionnement and Mutualité des PME), which stand guarantee for part of the amount borrowed from approved credit institutions if the guarantees supplied by the business are not sufficient. This activity, supported by the General Directorate for Small and Medium-sized Undertakings, ensures that SMUs have access to funding.

The Ministry of the Economy has tabled a bill of law to create an aid scheme intended to top up the existing schemes in order to support those SMEs, industries and self-employed people that find themselves experiencing temporary financial difficulties as a result of the repercussions of an exceptional, unforeseeable occurrence on a national or international scale. There will be three conditions for this aid being granted: the occurrence must be recognised as having a deleterious effect on the economic activity of certain businesses over a specific period of time; the business must be experiencing temporary financial difficulties; there must be a causal link between the difficulties and the occurrence.

A pandemic such as the coronavirus falls within the definition of an exceptional occurrence. Once this legislation comes into force, affected SMEs, industries and self-employed people will be able to take advantage of such aid. The costs admissible under the new scheme of aid will be limited to the documented loss of income. The aid will take the form of a recoverable advance payment and will be soon approved by the Luxembourg Parliament. The maximum amount of aid could reach up to 500.000 EUR per company

## II.2. Fiscal measures to support companies and self-employed hit by the COVID-19 pandemic

Due to the crisis resulting from the spread of Covid-19, the Government has decided to introduce several tax measures in favor of legal and natural persons. The main objective of these measures is to alleviate the financing and liquidity needs of corporations and self-employed persons strongly impacted by the current economic environment.

With regard to direct taxes, the modalities of the advance tax payments and payment deadlines will be adapted for corporations and self-employed persons. More specifically, legal persons and natural persons carrying out an activity generating trade and business income, agriculture and forestry income, or income from independent professional services, who are experiencing liquidity problems due to the Covid-19 pandemic, can apply for a cancellation of the two first quarterly advance tax payments of the year 2020 (due in March and June 2020) ([Demande d'annulation des avances trimestrielle](#)). Covered by this measure are (corporate) income and municipal business taxes.

In addition, these same persons may request, for taxes due after 29 February 2020, a payment extension of four months ([Demande délai de paiement](#)). On this deferral, no interest on late payment will be due and it covers (corporate) income, municipal business, and net wealth taxes.

To benefit from these two aforementioned measures, it is sufficient to send the two newly created forms to the competent tax office of the Administration des contributions directes.

The request is automatically accepted upon receipt by the administration.

It should also be noted that the deadline for submitting tax returns has been extended to 30 June 2020. The new submission date is applicable for both legal and natural persons. The deadline for submitting, revoking or modifying a request for individual taxation is postponed to the same date.

With regard to indirect taxes, the Administration de l'enregistrement, des domaines et de la TVA will reimburse this week all VAT credit balances below 10,000 euros.

## II.3. Measures at the level of social security contributions to be implemented in the context of the COVID-19 crisis by the Joint Social Security Centre

Faced with the impact of COVID-19 on companies and the self-employed in Luxembourg, the Joint Social Security Centre (CCSS) and the Minister for Social Security, Romain Schneider, have taken a series of measures to support companies and the self-employed by offering them greater flexibility in their management of the payment of social security contributions.

As of 1 April 2020, the CCSS is going to put the following temporary measures into place:



- Suspension of the calculation of default interest for late payments;
- Suspension of the initiation of proceedings for the forced collection of contributions;
- Suspension of the enforcement of constraints by bailiff;
- Suspension of fines to be pronounced against employers who are late in making declarations to the CCSS.

These measures will continue until the Board of Directors of the CCSS finds that they are no longer necessary.

While it is clear that all social security contributions remain due, this measures will nevertheless enable employers who find themselves in a financially precarious situation because of the COVID-19 crisis to better manage the payment of their social security contributions in the coming weeks, without having to fear administrative sanctions.

The aforementioned measures do not only apply to future calls for contributions, but also to the current balances of social security contributions, notwithstanding any mention (interest, fines, etc.) on the CCSS statement of account dated 14 March 2020.

In addition to these measures, the CCSS will pay an advance on the financial compensation for extraordinary leave for family reasons granted to the parents of children affected by the temporary closure of basic and secondary education, vocational training and childcare facilities, etc.

The purpose of this measure is to advance a substantial part of the reimbursement of salaries that employers must continue to pay to the parents concerned and which would normally only be made in May 2020 through the Employers' Mutual Insurance Scheme (Mutualité des Employeurs).

The CCSS will contact employers potentially affected by such extraordinary leaves for family reasons in order to provide them with the information necessary to request such an advance on the reimbursement of the Employers' Mutual Insurance Fund. The advance will be liquidated in mid-April 2020.

#### II.4. Arrangements for employees who stay at home

The employer may place the employees concerned under the system of work exemption, unless the latter provides him with sick leave.

Teleworking can be considered if the employment contract allows it, or by drafting an amendment with the agreement of the employee.

Short-time working is also possible when the company suffers the economic consequences of this pandemic.

##### *II.4.1. Teleworking*

Telework, when possible is a good solution, in principle it requires the agreement from both employer and employee.

It should already be noted here that telework and family leave (see II.4.3. of this report) can be alternated.



A cross-border worker can work from his country of residence as many days as he wishes, there is no limit beyond which the measure becomes illegal.

Nevertheless, the number of days teleworked may have an impact in terms of taxation and social security.

Indeed, from a tax point of view, the cross-border worker remains taxable in Luxembourg if he does not exceed 24 days of work per calendar year outside Luxembourg for the Belgian resident, 29 for the French resident and 19 for the German resident.

#### II.4.1.1. Belgian cross-border worker

Belgians can telework from Belgium while continuing to be taxed in the Grand Duchy of Luxembourg.

The Government indeed published on March 16, 2020 the press release, aimed at avoiding double taxation of workers.

It has been decided that from this Saturday, March 14, 2020, the presence of a worker at his home, in particular for teleworking, will not be taken into account in the calculation of the 24-day period. This measure is applicable until further notice.

The Luxembourg government has also issued a certificate to facilitate border crossing by Luxembourg workers living in Belgium. ([Certificat prouvant la nécessité de traverser la frontière pour les résidents belges](#)).

Upon presentation of this certificate, Luxembourg workers residing in Belgium will be exempt from the restrictions on border crossings between Belgium and Luxembourg.

This certificate must be presented in the event of police checks. It must be completed by the employee and the employer.

#### II.4.1.2. French Cross-border worker

Like the Belgians, French residents employed in Luxembourg can work from a distance without limit during this crisis.

In addition, the Luxembourg Government has also drawn up a certificate attesting the employment relationship with the employee, thus allowing the entry of frontier workers into Luxembourg during possible border checks ([Certificat prouvant la nécessité de traverser la frontière pour les résidents français](#)).

French cross-border commuters must also have a derogatory displacement certificate ([Attestation de déplacement dérogatoire](#)) and a proof of professional displacement ([Justificatif de déplacement professionnel](#)).

#### II.4.1.3. German Cross-border worker

Negotiations are currently underway between Germany and Luxembourg concerning a possible increase in the number of days of telecommuting taxable in Luxembourg and reconsider the ceilings in view of the current situation.



In order to limit the spread of Coronavirus, reinforced controls at the border between Germany and Luxembourg will be carried out.

To facilitate entry into the territory for cross-border workers, the Luxembourg Government has put online a certificate to be completed by Luxembourg employers, a certificate attesting to the working relationship with the cross-border worker.

This certificate serves as proof of the need for cross-border workers to cross the border to work in Luxembourg. On presentation of this certificate, cross-border workers are exempt from the restrictions put in place by the German authorities.

The German federal police have drawn up a uniform certificate for professional border workers, which can be clearly visible behind the windscreen.

#### *II.4.2. Short-time working*

In order to protect jobs and thus prevent redundancies, the Luxembourg Labour Code allows businesses to resort to various types of short-time work under certain conditions and depending on the nature of the difficulties encountered.

Henceforth, there is:

- An accelerated procedure for companies directly impacted by a government decision (see II.4.2.a)
- A short-time work in case of “force majeure / corona virus (see II.4.2.b)

##### II.4.2.a. Accelerated procedure for companies directly impacted by a government decision

Companies which have had or still have to completely or partially stop their activities following a government decision, such as those referred to by the ministerial decree of March 16, 2020 or subsequent decisions, are exceptionally directly eligible for short-time work, from the date effective date of the government decision that led to their total or partial closure.

An online system to request reimbursement is under development and will be available in the coming days on the ADEM website. The companies concerned are invited to wait for this system to go online to submit their reimbursement request, which will be retroactive to March 16, 2020. A general public communication will be made as soon as the online system is operational.

Reimbursement is limited to 80% of the normal salary, capped at 250% of the minimum social salary for unskilled employees (ie 2,141.99 EUR x 2.5). A monthly statement must be entered.

The reimbursement declarations will be subject to ex post control and false or fraudulent declarations may give rise to forced restitution without prejudice to legal proceedings.

##### II.4.A.b. Short-time work in case of “force majeure/coronavirus

The scheme for short-time work in the event of force majeure may be applied to employees who are not covered by an attestation of their inability to work and can no longer be employed either at all or full-time when the business is no longer able to ensure the normal functioning of its activity



because its supplier of raw materials is no longer able to deliver or supply the full volume required as a result of the coronavirus or if there is a substantial drop in orders from customers or users as a result of the coronavirus.

This scheme for short-time work may also be applied to employees who are not covered by an attestation of their inability to work and can no longer be employed either at all or full-time because the business is no longer able to ensure the normal functioning of its activity because of staff absences as a result of external decisions in respect of the coronavirus or if one or more of the departments of the business are at a standstill. [guichet.public.lu](http://guichet.public.lu).

It applies in principle to all the sectors of the economy if the causes invoked are directly related to the coronavirus.

If an application is approved, the Employment Fund (Fonds pour l'Emploi) pays 80% of normal salaries, subject to a maximum of 250% of the minimum social wage for an unskilled employee, for a maximum of 1,022 hours per employee per year.

Short-time working in the event of force majeure can be applied to all employees with their place of work in Luxembourg, whether they are under a permanent employment contract or a fixed-term employment contract. They must be able to work and aged under 68 and who do not benefit from a retirement pension old-age, early old-age pension or invalidity pension, normally employed at a workplace in the country

Temporary workers are therefore excluded.

On the other hand, and with a view to continuing to motivate companies to actively participate in dual system apprenticeships, apprentices are eligible.

As for the requests sent by the crèches, they are in principle ineligible since the Ministry of National Education, Childhood and Youth continues to contribute to their operating costs at a rate of 70%.

To apply for short-time work in the event of force majeure, the business must:

- be established in Luxembourg;
- hold, where applicable, a business permit granted by the competent authority;
- be impacted by the economic or legal consequences of an external event which makes it impossible for the business to continue their normal economic activity. The event must not have been caused by the business;
- undertake to not dismiss any employee for economic reasons.

Before applying for short-time work, the business manager must inform and consult with the staff delegation (délégation du personnel) and the trade unions until the next social elections in the case of businesses bound by a collective agreement.

Short-time working applications must be submitted by the 12th day of the month preceding the requested short-time working period (for example, before 12 September for a short-time working application relating to the month of October).

Short-time working can never be granted retroactively.



For the first application, the business must submit its application for short-time work to the secretariat of the Economic Committee and indicate the external event which made the continuation of the economic activity impossible. Each application will be treated with complete confidentiality.

The form must be duly signed by the business manager and by the staff delegation. By signing the form, the staff delegation acknowledges that the business manager has received the delegation and informed them about the application for short-time work.

If the company has less than 15 employees or does not have a staff delegation, each employee concerned must sign the form individually.

The initial application must be accompanied by the following documents:

- the annual financial statements for the last 3 financial years;
- proof of payment of social security contributions.

The Economic Committee analyses the balance sheet and financial situation of the business and checks:

- the existence of an external event allegedly impacting the business;
- if the event was caused by the business itself;
- whether the business is actually unable to carry out its normal activity.

It submits a written opinion to the Government Council (Conseil de Gouvernement) who will decide whether or not to allow short-time work.

After the decision taken by the Government Council, the Economic Committee will send the decision by post and by fax to the number indicated in the application. No information will be provided by telephone.

If the application is approved, the business is authorised to use short-time working for as long as the consequences of the event make it impossible to continue its normal business activity.

The business must nevertheless renew its application each month and inform the secretariat of the Economic Committee of any change in the situation.

For subsequent applications after the initial application, the business has to:

- submit the duly-signed application for short-time work before the 12th of each month;
- indicate any changes in comparison with previous months (e.g. number of employees affected).

The permission to make use of the provisions concerning short-time working in case of force majeure can only be granted for a maximum of 1,022 hours per year and per full-time working employee. For persons working on a part-time basis, the limit of 1,022 hours are pro-rated.

During the period of short-time work, the employer pays each employee:



- the salary due for every hour worked;
- as well as a compensatory allowance corresponding to 80 % of the worker's normal salary in respect of inactive hours.

Employers also have to continue to pay the following to the competent public administrations:

- social contributions (the employer's and the employee's share) and withholding tax on salaries paid for hours worked;
- and also social contributions (the employer's and the employee's share) and withholding tax on the compensatory allowance paid for inactive hours, with the exception of the following employer's contributions:
  - accident insurance contributions;
  - and family benefits.

In the event of an employee on sick leave during the period of short-time work, the employer continues to pay the salary and compensatory allowances as in any case of incapacity for work.

Within 2 months following the month under short-time work, the employer must send the ADEM a monthly declaration of claim, the individual forms signed by the employees concerned by the short-time working and a statement of the amounts.

The State reimburses the employer the compensatory allowance (80 % of the salary normally received by each employee) paid for the inactive hours up to a maximum of 250 % of the social minimum wage.

Employees are not required to stay at work during inactive hours.

However, they need to remain at their employer's disposal who may, at any time, call the employees back to work in the event of a pick-up of activity.

### *III.3.3. Special leave for family reasons*

It is possible to request extraordinary leave for family reasons (provided that the children are under the age of 13), the conditions of which have been relaxed by Grand Ducal regulation following the announcement of the closure.

It benefits both the self-employed and employees and the employer cannot refuse it if the conditions are met and the procedures validly carried out.

Only people who have no other suitable option for childcare should use this exceptional measure. If the parents have another suitable option for childcare, for example work from home, organize themselves with other people for childcare (neighbors, family, etc. who are not a vulnerable person or a member of a group at risk possibility), this option should be preferred.

The duly completed form has the same value as a medical certificate within the meaning of Articles L.234-53 and L.234-54 of the Labour Code as far as the employer and the CNS are concerned.



- 1) The parent must inform his employer as quickly as possible and inform him about the start and the end date of the leave;
- 2) The parent must then fill in and sign the appropriate form, entitled "Certificate of leave for family reasons in the context of containing the spread of an epidemic (COVID-19)" (the dates of start and end of the leave do not need to be filled in on the form) ([Certificat de congé pour raisons familiales](#))
- 3) The form has to be sent to both the National Health Fund (Caisse Nationale de Santé - CNS) and the employer once for every parent taking the leave. If the leave is split (taken in more than one period), the parent does not need to fill in and send a new form. The first form is sufficient.
- 4) For the employer only: transmit an inventory count of actually taken as leave for family reasons and pass it on, following the usual procedure.

There is no need to indicate on the form a date for starting or ending the leave. The parent must contact his employer to inform it that he is taking leave for family reasons. The parent must also inform his employer of the days (or half-days) he will be taking as leave for family reasons. Thereafter, it is the employer that informs the social security institutions of the specific days.

One parent affiliated to the Luxembourg social security scheme (whether resident in the Grand Duchy or not) of one or more children under 13 years of age (< 13 years) attending a school affected by the temporary closures in primary and secondary education, vocational training, etc. (teaching structures) may take leave for family reasons.

Both parents can alternate leave according to their needs, on condition that both parents are affiliated to the Luxembourg social security scheme. Each parent must fill in a separate form.

### **For more information**

Our experts, who remain fully operational during the crisis, are at your disposal for more information.

The measures taken by the Government may change at any time, do not hesitate to contact in particular :



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