

April 3, 2020

COVID-19 measures : Legal & Tax Committee

INTRODUCTION

The Legal & Tax Committee of AmCham Belgium (hereafter “AmCham LTC”) wants to express its strong appreciation for the measures taken so far by the Belgian Government to mitigate on the immediate impact of the COVID-19 virus.

In order to ensure that all types of businesses that are otherwise healthy but now most affected by this crisis can cope with the economic consequences of COVID-19, the AmCham LTC recommends additional measures to minimize the risk of negative snowballing effects to ensure the short-term continuity of businesses in Belgium.

The measures are based on following principles:

- Short term measures
- For businesses materially impacted by COVID-19 crisis
- With the aim to keep the cash in the otherwise healthy companies
- To delay reporting & payment of all types of taxes, both on regional and federal level
- To reduce administrative burden & red tape. and
- Possibly linked to the condition to maintain employment after the crisis

Additional suspension of all types of tax payments

In addition to the measures already applied, a further broadening of the scope of the suspension of all types of tax payments without interest and penalties, in line with measures taken by many other countries, is suggested.

This would include delay of payment of all types of taxes till at least September 30, 2020. This moratorium should include Corporate Income Tax payments, VAT, Customs Duties, Excise Taxes, Regional Taxes, Real Estate Tax, Provincial and Communal Taxes as well as any interest which may be due on pending tax disputes and court cases.

AmCham LTC also suggests to temporarily lower the late payment interests for all taxes after the payment suspension period to 0.1% per month, which is still above applicable market rates nowadays.

The new measures which should be introduced immediately in a clear way, with minimal formalities should benefit companies hit directly by COVID-19. At the same time, AmCham believes that the present distress situation does not warrant any free rider situations for businesses that are not materially affected. The companies targeted to benefit from this measure should therefore justify their application, with the understanding that the justification may be audited at the end of the grace period, and interest applied, in the event of manifestly unfounded payment delays. We recommend that, similar to some of our neighbouring countries, a one-page electronic form should be introduced. This form should enable processing and sending through commonly accessible PC programs and email systems.

Postpone implementation of new legislation

Working from home is mandatory for all employees who are able to do so. The priority of these employees is to ensure the business continuity. They should therefore be released from any duty which is not strictly required during the COVID-19 crisis. Therefore, legislative changes as the implementation of DAC6 should not be dealt with as a priority. AmCham LTC recommends that the Belgian tax authorities contact the European Commission to ask that any reporting under DAC6 should be postponed till Jan 1, 2021 without imposing fines being imposed for late reporting during this period.

Postpone the entry into effect of the MLI changes to the Tax Treaties by 1 year: Jan 1, 2022 instead of Jan 1, 2021.

Reduce administrative burden & red tape

- Measures should be taken that reduce, with immediately effect, the very onerous tax formalities in Belgium. This should include the replacement of the requirement to file separate withholding tax returns for each single payment by a quarterly consolidated return of all such transactions.
- Accept scanned copies or photos of attestations for exemption or reductions of withholding tax on dividends, interest or royalties.

Other Corporate Income Tax measures

- Early reimbursement of R&D tax credits restricted to companies impacted by the COVID-19
- Tax losses incurred in 2020 can be carried forward to and used in subsequent years without being subject to the restrictions imposed by art. 207, par. 5 WIB92
- Support provided to companies and individuals (by the government or by group members) due to the Corona crisis should be tax neutral, i.e. no (deemed) taxation or gratuitous advantage (e.g. subsidies, premiums, granting interest free loans, etc.). Tax exemption of grants or other supports received from the authorities
- Tax Administration should accept that tax neutral reorganizations realised in the second half of 2020 (up year-end), can have retroactive effect as per January 1, 2020.
- Reduce penalty of insufficient prepayment for companies to the same rate as for individuals (2.25% instead of 6.75%) for any tax bill to be issued in 2020 or tax related to book year closed in 2020.
- Suspend the non-deduction of losses carried forward and similar deduction on tax adjustments for the book year closed in 2020.
- Confirm non-existence of Permanent Establishment for Direct Tax purposes and Fixed Establishment for VAT in case employees of non-Belgian entities have their residency in Belgium and are temporarily performing their work out of a location in Belgium.

VAT

- Allow the pdf version of a paper invoice as a valid document equivalent to an electronic invoice to get VAT deductibility. Many people in Accounts Payable teams are working from

home without access to the invoices send via courier to the office address of a company. This may lead to unpaid/overdue invoices to suppliers.

- General postponement of the time to file any VAT related reporting until the last calendar day of the next calendar month
- Immediate refund of VAT receivable balances. Eventually, VAT fraud sensitive sectors and businesses could ask for refund upon establishment of a bank guarantee. The current measure fastens VAT refund for the VAT return of the month of February. This measure needs to be extended for the VAT returns of March till June.
- Application of article 164 and 165 VAT Directive (re-introduction of article 43 VAT Code) exempt purchases for intra-Community acquisitions, imports and supplies of goods to the taxable person that will later be exported or supplied within the Community (exempt intra-Community supplies) and for supplies of services linked to the export or intra-Community business. The value that can be purchased tax exempt = equal to the amount of the exempt export/intra-Community supplies during the preceding 12 months:
- VAT warehouse: extend the list of Community goods and the period goods can be stored in a VAT warehouse (Article 160 (2) VAT Directive)
- Bad debts: Business to adjust VAT on bad debts in case trade receivable remains unpaid for 3 months
- Cancelled events: AmCham LTC suggests for a flexible approach related to the adjustment of VAT on cancelled events. VAT included in the ticket price, entrance fee etc that has been paid by the organizer of the event to the authorities should be refundable, taken into account that the event is cancelled. Referring to ECJ case law, the retainer of a ticket price could be seen as compensation for the loss of the organiser, outside the scope of VAT. VAT already paid should then be refundable to the event organiser. In case the organizer issues a voucher to compensate for the cancelled event, this should be treated as a transaction outside the scope of VAT, allowing the organizer to reclaim the initially paid VAT on the tickets sold.
- Import VAT deferral: Grant the license (ET14.000) to defer VAT to all businesses without administrative formalities. This can be done in the same way EORI numbers have been provided to taxpayers due to the Brexit.

Customs

AmCham LTC recommends the Belgian authorities to contact the European Commission and suggest following measures:

- Suspension of Import duty payments and other related taxes and payments
- Flexibility when customs guarantees limits are reached
- Allow re-entry of excise goods in excise bonded warehouse
- Introduce flexible procedure to destroy alcohol products (beer) with reimbursement of excise duties paid.
- Reduction of the Customs value in case of air freight. The latter is currently very expensive compared to other means of transport as for instance ocean freight. Shipments via air freight as such result in a higher Customs value
- Introduction of "first sale principle"

- Easement/flexibility in granting authorisations for customs procedure.
- Flexibility on amendment or cancellation of customs procedures
- Accommodate digital processing of documents to the maximum
- Reduce physical checks by customs authorities to a minimum.

Employee taxation

- To stimulate business to continue working, AmCham LTC strongly suggests allowing a reduction of social security due on all types of salaries.
- Employees continuing to work should be rewarded with a special covid 19 tax-free cash bonus or award voucher.
- The possibility needs to be foreseen to introduce a “special employee savings plan” where employees who voluntary delay their compensation during a certain period (for example 3 to 6 months) and receive this compensation at a later stage could be entitled to a certain tax incentive at moment of pay out after that period (taxed for example at a beneficial tax rate);
- In order to keep people at work, a compensation (subsidy) could be granted to employers (who have a significant revenue decrease) to pay the salary cost up to 3 months, with as a purpose to avoid as much as resignations/unemployment people as possible (based on measure in The Netherlands : “Tijdelijke Noodmaatregel voor Werkbehoud”)