

Coronavirus pandemic: Special arrangements in Germany, France, Italy, Poland and the Netherlands

The shutdown of public life – in some cases involving multiple weeks-long lockdowns – has caused the economy to founder not only in many European countries but also worldwide. All countries immediately responded to the situation with emergency measures, and virtually overnight, they modified existing arrangements (for a limited period of time) or created new instruments in order to provide support to companies large and small. In this article, we will present examples of special arrangements that were enacted in Germany, France, Italy, Poland and the Netherlands to deal with the pandemic.

One of the first measures taken by the German legislators was to suspend the obligation to apply for commencement of insolvency proceedings. In addition, taxes were allowed to be deferred interest-free, and the VAT rate was lowered. Then financial support was provided to struggling companies e.g. by expanding the existing loan programmes of the *Kreditanstalt für Wiederaufbau (KfW)* and creating new ones, such as the KfW Instant Loan.

France and Poland also suspended the obligation to apply for commencement of insolvency proceedings. By contrast, there is no obligation under Dutch insolvency law to apply for commencement of insolvency proceedings. Similarly, the Netherlands did not provide for short-time working prior to the coronavirus crisis. The Temporary Emergency Bridging Measure to Preserve Employment (*Tijdelijke Noodmaatregel Overbrugging voor Werkgelegenheid, NOW*) introduced an arrangement, new to the Netherlands, that is comparable to the German instrument of short-time working. Although Poland also does not provide for short-time working comparable to German law, employers a shortening of working time is possible here as a result of the “anti-crisis shield” passed by the Polish government. Both Poland and the Netherlands have also used pandemic-related measures as an opportunity to introduce a preventive restructuring framework, as has Germany.

France has gone a step farther and enacted a broad stimulus package, the recovery plan *France Relance*, which is designed not only to battle the consequences of the pandemic in the short term but also to put the French economy back on track in the long term, as well as to continue with ecological transformation. For instance, the stimulus package includes incentives for purchasing more environmentally friendly vehicles and subsidies for renovating buildings to make them more energy efficient.

In terms of short-term measures, France did not enact any sweeping arrangements to stimulate consumption, like lowering the VAT rate as happened in Germany. The strategy of the French government is to pursue supply-oriented policies by providing companies with tax relief. That said, compared with Germany, France has a very generous short-time working scheme, and extensive use was made of it.

Because of the pandemic, Italy has postponed its scheduled reform of insolvency law. The planned introduction of an early-warning system would have acted like a fire accelerant among companies crippled by the pandemic. Instead, Italy

enacted a variety of aid measures, such as the impressively named Superbonus 110%, which is designed to promote investments.

Keeping up with the legislative activities in this area is as challenging as managing a severe crisis of a company. Any such endeavour however needs a cut-off date. This editorial one for this Yearbook was 31 December 2020.

1. Germany

By Dr Jürgen Erbe, MBA, Attorney-at-Law in Germany and Certified Specialist in Insolvency Law

a. Arrangements in insolvency law¹

COVInsAG

The German Act to Temporarily Suspend the Obligation to Apply for Commencement of Insolvency Proceedings and to Limit Directors' Liability in the Case of Insolvency Caused by the Covid-19 Pandemic (*COVID-19-Insolvenzaussetzungsgesetz*, COVInsAG)² modified several arrangements in insolvency law. The Act principally addressed the obligation of the debtor to apply for commencement of insolvency proceedings (section 1 COVInsAG), the right of creditors to file an application for commencement of insolvency proceedings (section 3 COVInsAG) and the consequences of suspension (section 2 COVInsAG). Sections 4 to 7 were added to the COVInsAG by the Act on the Advancement of Restructuring and Insolvency Law (*Sanierungs- und Insolvenzfortentwicklungsgesetz*, SanInsFoG). The additions took effect on 1 January 2021.

Suspension of the obligation to apply for commencement of insolvency proceedings

Section 1 COVInsAG suspends the obligation to file an application for commencement of insolvency proceedings (section 15a of the German Insolvency Code [*Insolvenzordnung*, InsO] / section 42 (2) of the German Civil Code [*Bürgerliches Gesetzbuch*, BGB]), provided that insolvency is attributable to circumstances caused by the Covid-19 pandemic and there are specific prospects of remedying the grounds for the application for commencement of insolvency proceedings. If the debtor was not illiquid on 31 December 2019, it is assumed that material insolvency is a consequence of the Covid-19 pandemic and that there are prospects of remedying existing illiquidity. The suspension applies to the same extent for overindebtedness as grounds for filing an application. The newly added section 1 (3) COVInsAG also suspends the obligation to file an application for commencement of proceedings in accordance with section 1 (1) COVInsAG in cases where an application for "coronavirus financial assistance" was made between 1 November 2020 and 31 December 2020. This suspension is unavailable only if the applicant obviously has no prospect of receiving such assistance, or where receipt of such assistance would not remedy material insolvency.

Application right of creditors modified

Because creditors could potentially circumvent the suspension of the obligation to apply for commencement of insolvency proceedings by filing their own applications, the legislators adopted an arrangement to address this in section 3 COVInsAG, which

¹ Current information about special arrangements in insolvency and employment law can also be found at www.schultze-braun.de under the tab "Corona".

² Reproduced in Part Two.

changes the conditions for creditor applications: Applications by creditors for commencement of insolvency proceedings that are filed between 28 March 2020 and 28 June 2020 are to be valid only if material insolvency existed on 1 March 2020.

Section 2 COVInsAG sets out the consequences of suspension. As a rule, managers are liable for payments made after the occurrence of material insolvency unless they did so in exercise of the care of a prudent businessperson. This liability standard applies irrespective of suspension of the obligation to file an application. However, payments that are made in the ordinary course of business, in particular those payments which serve to maintain or resume business operations or to implement a recovery concept, are deemed to have been made with the due care of a prudent manager (section 2 (1) No. 1 COVInsAG). At the same time, the requirements have been increased with respect to avoidance (section 2 (1) Nos. 2 and 4 COVInsAG) and the liability of lenders (section 2 (1) No. 3 COVInsAG) if insolvency proceedings are subsequently commenced.

The new sections 4 to 7 COVInsAG include further provisions with the following content: Section 4 COVInsAG shortens the forecast period for the overindebtedness test from twelve to four months if the debtor's overindebtedness is attributable to the Covid-19 pandemic. The situations in which this is presumed to be the case are set out in points 1 to 3 of this provision.

The SanInsFOG tightens up the conditions for access to self-administration proceedings. However, section 5 COVInsAG provides that sections 270 to 285 InsO (old version) are applicable if the need to enter self-administration proceedings is caused by the pandemic. The conditions under which this is deemed to be the case are set out in section 5 (2) and (3) COVInsAG. If the court learns that the grounds for insolvency are not attributable to the pandemic, it can subsequently terminate the proceedings and appoint a preliminary insolvency administrator.

Section 6 COVInsAG contains a similar rule, according to which even a debtor's illiquidity does not prevent a court from ordering the protective shield procedure if the debtor satisfies the requirements set out in numbers 1 to 3 of that section. This is remarkable, because in the previous version of section 270b InsO, access to the protective shield procedure was categorically ruled out in case of illiquidity.

The newly inserted section 7 COVInsAG deals with handling of financial assistance and incorporation of that assistance into restructuring or insolvency plans.

Consequences of suspension

Amendments introduced by the SanInsFoG



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b. Measures in employment and social-security law

By Alexander von Saenger, Attorney-at-Law in Germany and Certified Specialist in Employment Law

KugV

To begin with, the German Act on the Temporary, Crisis-Related Improvement of the Arrangement for Short-Time Working Allowances (*Gesetz zur befristeten krisenbedingten Verbesserung der Regelungen für das Kurzarbeitergeld*) and the regulations based on it (German Regulation on Short-Time Working Allowances [*Kurzarbeitergeldverordnung*, KugV]) relaxed the requirements for accessing allowances for short-time working. The relief has been in effect since 1 March 2020. For companies which introduce short-time working by 31 March 2021, it is scheduled to end on 31 December 2021.

Agency workers

An important lever is the full reimbursement of social security contributions for lost work hours. This has now been complemented by the expansion of the arrangements on short-time working allowances to include agency workers.

Increase in short-time working allowances

As part of the Social Protection Package II (*Sozialschutz-Paket II*), the legislators enacted a progressive increase in short-time working allowances. The increased rates initially apply until 31 December 2021 if the entitlement to short-time working allowance arose by 21 March 2021. In order to qualify for payment of increased short-time working allowances, there must have been a loss of work of at least 50%.

The same law also simplified the opportunities to earn additional income to supplement short-time working allowances, which is an important consideration.



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c. Financial subsidies

By Nils Andersson-Lindström, Attorney-at-Law in Germany

Condition

The legislators have enacted a wide range of aid measures in order to provide financial assistance to companies affected by the pandemic. Since all support measures involve subsidies, assistance is conditioned on the applicant not having been a “firm in difficulty” within the meaning of EU law on 31 December 2019. That would be the case, for example, if grounds existed at that time for applying

for commencement of insolvency proceedings, if “rescue aid” had already been granted or if losses had diminished the applicant’s share capital by half. Large enterprises are considered to be in difficulty if debt has exceeded equity by more than 750% over a period of two years or if operating earnings are insufficient for making interest payments.

The Federal Government has expanded various loan programmes of the Kreditanstalt für Wiederaufbau (KfW) and created new ones.

For instance, lending terms under existing programmes have been substantially improved for entrepreneur loans, syndicated financing and start-up loans using resources of the European Recovery Program. They include lower interest rates, simplified risk assessment by the KfW and indemnity against liability of up to 90%. Since all of these programmes involve a residual risk that is borne by the borrower’s bank, supervisory requirements obligate the bank to verify the borrower’s creditworthiness, which can slow down the process considerably.

Simplified lending

In response, the Federal Government created the KfW Instant Loan. It is available to companies that have more than 10 employees and have been operating on the market since at least 1 January 2019. Companies can borrow up to three months’ turnover in 2019. It is limited to EUR 800,000 for companies with more than 50 employees and to EUR 500,000 for companies with fewer than 50 employees. The loan has a 3% interest rate and a term of 10 years. The company’s bank is indemnified in full by KfW, secured by a Federal Government guarantee. Loans are to be approved without any further risk assessment so that they can be disbursed as quickly as possible.

KfW Instant Loan

The coronavirus interim assistance schemes (*Überbrückungshilfen, ÜH*), a joint tool of the Federal Government and the Federal States, took the form of non-repayable grants. Assistance could be applied for only for the months of June 2020 to August 2020 (ÜH I) and September 2020 to December 2020 (ÜH II), and the amount was based on expected loss of turnover during those months compared with the same period in the previous year. Interim assistance reimbursed up to 80% (ÜH I) and 90% (ÜH II) of fixed costs, depending on the decline in turnover, and was capped at EUR 50,000 per month. Alongside this, the “November assistance” scheme was also available to companies affected directly or indirectly by lockdown. Recipients received a grant equal to 75% of their turnover in November of the previous year. However, the fact that applications had to be submitted via a certified public accountant, tax advisor or lawyer made these schemes unattractive for small businesses.

Interim assistance and November assistance schemes

The Federal Government created the Economic Stabilisation Fund (*Wirtschaftsstabilisierungsfonds, WSF*) with the aim of supporting large and systemically important companies. In order to qualify for a WSF subsidy, companies must demonstrate clearly that they will be independently viable once the pandemic subsides and that other funding options are not available. The WSF grants guarantees for debt securities issued up until 31 December 2021 for the purpose of eliminating liquidity shortfalls and obtaining refinancing on the capital market. Alternatively, the WSF also enables the Federal Government to take a direct stake

Economic Stabilisation Fund

in crippled companies at market conditions, such as in the form of silent participations (as with Lufthansa), profit-sharing rights, bonds (as with TUI) or direct shareholdings, provided that this is necessary in order to stabilise the company.



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d. Tax relief

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In order to stabilise the economy, the Federal Government and the Federal States have, in addition to the numerous aid programmes described above, also enacted tax and social-insurance measures for companies and self-employed professionals.

Applications for interest-free tax deferrals can be lodged with the tax office until 31 March 2020 for income, corporation and value-added tax that is due or will become due, as well as with the municipality for trade tax. To qualify for a deferral, the taxpayer must demonstrate that it has been directly and significantly affected by the coronavirus pandemic. Deferrals run until 30 June 2021. A deferral of wage tax is excluded.

For social insurance contributions for the months of March through May 2020, a simplified procedure was in place to defer payment until the due date for the contribution in June 2020. Companies were not charged deferral interest, late penalties or reminder fees. In order to qualify, a company needed to show that it had made use of options for mitigating the situation, such as short-time working and other subsidies and loans. Contributions for voluntarily insured persons were also covered by the deferral options. Starting in June 2020, companies were permitted to pay in instalments. In addition to this simplified deferral option, companies continue to have the ability to obtain an (interest-bearing) deferral in the case of considerable hardship. Social insurance contributions relating to short-time working were reimbursed in full by the Federal Employment Agency, initially until 30 June 2021. From 1 July 2021 until 31 December 2021, one-half of these contributions will be reimbursed for all companies that introduced short-time working by 30 June 2021.

Taxpayers can adjust the amount of their pre-payments for income, corporation and trade tax (assessment basis) to conform to their financial circumstances. A special pre-payment for VAT that has already been made for 2020 could be refunded in full if the deadline for a permanent extension was met.

Deferrals and reimbursements

Adjustment of pre-payments

SMEs were allowed to carry back expected losses in 2020 for the purpose of adjusting tax pre-payments that have already been made for 2019 and to offset them against profits for 2019.

Offsetting of expected losses

The VAT rate was reduced from 19% to 16% for the period from 1 July 2020 to 31 December 2020, and the reduced rate was reduced from 7% to 5% for the same period. In addition, a more extensive measure was enacted for the catering industry: From 1 July 2020 until 30 June 2021, the serving of food is generally subject to the reduced tax rate, but not the serving of drinks.

VAT rate

No enforcement action is to be taken until 30 June 2021 for taxes that are in arrears or have become due. Late charges that are due for the period 19 March 2020 to 31 December 2020 are to be waived when the principal debt is paid.

Enforcement measures

Since 16 March 2020, social insurance audits are being conducted by the German Pension Insurance Association (DRV) electronically until further notice.

Social insurance audits

The deadline for filing 2018 tax returns prepared by an accountant was extended until 31 May 2020, and the deadline for filing 2019 returns was extended until 31 March 2020. Upon application by the employer, the deadline for filing wage tax reports during the coronavirus crisis can be extended on a case-by-case basis by up to two months. The employer must demonstrate that it is prevented through no fault of its own from sending the wage tax reports on time.

Time limits

The consequences of the pandemic on financial reporting are to be classified as non-adjusting events and are not to be taken into consideration in financial statements with a reporting date of 31 December 2019. For financial statements with a reporting date after 31 December 2019, it is to be assumed as a rule that the consequences of the coronavirus crisis are adjusting events and are to be taken into consideration for accounting purposes. From 31 March 2020, it should normally be assumed that the pandemic needs to be reflected in the financial statements.

Accounting

The loss carryback to the previous year is limited to EUR 1 million or, in the case of joint tax assessment, to EUR 2 million. These amounts were increased to EUR 5 million and EUR 10 million, respectively, for 2020 and 2021, enabling a higher loss carryback to 2019 and 2020.

Increase of the loss carryback

Taxpayers can make use of accelerated depreciation instead of straight-line depreciation for moveable assets that are purchased or produced in 2020 and 2021. Accelerated depreciation is based on the carrying amount (residual value) of the asset and can be performed at a rate that is up to 2.5 times that for straight-line depreciation, but not more than 25%.

Reintroduction of accelerated depreciation

The period for the retroactive effect of transformations that are reported to the commercial register in 2020 and 2021, as well as for mergers for which a merger agreement was concluded in 2020 and 2021, was extended from eight to 12 months.

Extension of the period

Due date for import VAT

The due date for import VAT was postponed by approximately six weeks to the 26th day of the second month following the import. This creates a positive effect on liquidity for companies that make use of a permanent extension of the deadline for filing their interim VAT return, because the offsetting of import VAT as input tax results in a VAT credit that can be used to settle import VAT.

Tax-free special payment to employees

A special payment that an employer makes to employees in addition to their wages in order to mitigate the adverse effects of the coronavirus crisis is exempt from taxes and social security contributions up to an amount of EUR 1,500. The special payment must be made between 1 March 2020 and 30 June 2021.

Child bonus

In 2020 families are being supported with a one-time child bonus of EUR 300 per child.

Single parent relief

The amount of the single parent relief was raised from EUR 1,908 to EUR 4,008 for 2020 and 2021.

Home office deduction

If a taxpayer does not have an office at home, or does not deduct his or her expenses for an office at home, he or she is permitted to deduct EUR 5 for each calendar day during which he or she carries out his or her business of professional activities entirely at home and does not visit any place of work outside home, up to a maximum of EUR 600 per year.



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2. France

Several days after the ordering of the *confinement* – the countrywide lockdown – on 17 March 2020, the French legislators enacted the Emergency Act to Combat the Covid-19 Epidemic of 23 March 2020,³ thereby creating the basis for declaring a national epidemic emergency by order of the Council of Ministers. In addition, the government was authorised to issue laws by way of executive regulation (*ordonnance*) over a period of three months. The government of Edouard Philippe made frequent use of this ability⁴ and issued more than 30 *ordonnances* within several days.⁵

a. Arrangements in insolvency and employment law

By Patrick Ehret, Attorney-at-Law in Germany and Attorney-at-Law in France (AMCO), Certified Specialist in International Law and European Law in France

The French government was forced to quickly revise its initial position that because of the immediate aid being provided to companies, there was no need to make adjustments to insolvency law. To begin with, *ordonnance* No. 2020-341 of 27 March 2020⁶ and *ordonnance* No. 2020-596 of 20 May 2020⁷ suspended the obligation to file an application for commencement of insolvency proceedings within 45 days of illiquidity having occurred until 23 August 2020. To benefit from the suspension, the company in question must not have been illiquid on the cut-off date of 12 March 2020. This measure was intended to enable companies affected by the economic impact of the pandemic to avail themselves of the preventive procedures of *conciliation* and *sauvegarde*, which are conditioned on illiquidity not having occurred and the 45-day period not having expired. In addition, the management of an affected company was to be protected in the form of exclusion of broad liability in the event of a delay in filing the application.

In addition to providing procedural relief with regard to applying for and conducting preventive and insolvency proceedings, the maximum duration of conciliation proceedings was extended to a total of ten months, to be done in a reasoned order of the president of the court. The preventive element of the *conciliation* was strengthened by transferring further powers to auditors as part of what is known as the “early-warning procedure”. The formerly purely consensual proceedings were augmented by the ability to impose a stay on a creditor with regard to acquiring enforceable title to claims and carrying out enforcement actions in the event that it refuses to comply with a deferral that has been ordered by the *conciliateur*.

³ Published in Official Journal No. 0072 of 24 March 2020 and entered into force with immediate effect.

⁴ For an overview of all Covid legislation in France: <https://www.e-tlf.com/2020/09/01/mesures-relatives-a-la-lutte-contre-la-propagation-du-virus-covid-19-arrete-du-14-03-20/>.

⁵ For an overview of the first 30 *ordonnances*: <https://www.franceinvest.eu/actualites/30-ordonnances-publiees-pour-faire-face-a-lepidemie-du-covid-19>.

⁶ *Ordonnance n° 2020-341 du 27 mars 2020 portant adaptation des règles relatives aux difficultés des entreprises et des exploitations agricoles à l'urgence sanitaire et modifiant certaines dispositions de procédure pénale*, published in Official Journal No. 0076 of 28 March 2020.

⁷ *Ordonnance n° 2020-596 du 20 mai 2020 portant adaptation des règles relatives aux difficultés des entreprises et des exploitations agricoles aux conséquences de l'épidémie de covid-19*, published in Official Journal No. 0124 of 21 May 2020.

Introduction

Suspension of the obligation to apply for commencement of insolvency proceedings

For companies in the midst of insolvency proceedings, the ability to undertake restructuring by transfer was made easier by enabling management to be awarded the contract under simplified conditions. This measure received criticism and expired on 31 December 2020.

In order to protect companies that are in the plan fulfilment stage, the legislators created the ability to extend debt-discharge plans by up to two years, which in French law are often enforced against the will of creditors. In addition, repayments can be suspended by up to two years. New plans can now have a maximum duration of 12 years instead of the current 10 years.

*Strengthening of
restructuring
instruments*

Finally, in anticipation of the Restructuring Directive,⁸ which must be transposed by mid-2021, the French legislators used the pandemic as the occasion for enacting transitional provisions strengthening restructuring instruments, which are applicable until 31 December 2021. On the one hand, the thresholds were lowered for the scope of the semi-collective, “accelerated” (financial) *sauvegarde* proceedings in order to provide a further incentive for consensual solutions in conciliation proceedings. On the other, the “new money” privilege was expanded to include the continuation phase and plan funding. Finally, measures were implemented to simply the discharge of manager debt and to promote a second chance.

*New arrangement
for short-time
working*

In addition to bolstering *télétravail* (remote working), the Covid pandemic has resulted in a variety of modifications to French employment law. The most important one is the new arrangement for short-time working, known as *activité partielle*, through which 70% of gross salary is covered, limited to 4.5 times the minimum wage. As part of the stimulus programme announced in early September, EUR 7.6 billion was budgeted for funding long-term short-time working.



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b. Financial assistance

By Ellen Delzant, Attorney-at-Law in Germany and France

*Government-backed
loans and relief in
obtaining loans*

In order to prevent liquidity shortfalls, the state-backed investment bank Bpifrance is providing up to EUR 300 billion in guarantees for bank loans to companies, with loans being guaranteed up to 90%. Under this framework, companies of any size and legal form can apply to their bank for a government-backed loan

⁸ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/132 (Directive on restructuring and insolvency).

by 30 June 2021, other than companies for which insolvency proceedings were commenced prior to 31 December 2019.

In addition, SMEs can make use of various zero-collateral lending programmes launched by Bpifrance as a result of the coronavirus crisis (*prêt Rebond, prêt Atout*).

In order to support French exporters, Bpifrance has also set up a special programme for the duration of the pandemic that provides export guarantees and export financing. This programme is intended to complement mechanisms that currently exist for reinsuring supplier credit insurance. It enables exporters to increase the coverage commitment by their credit insurers based on the reinsurance provided by Bpifrance.

Certain industries, particularly the automotive, aviation and tourism industries, also have access to support plans that provide special assistance, government participations, loans, and other measures.

On 3 September 2020, the French government announced *France Relance*, a two-year recovery plan with a volume of EUR 100 billion. It is designed, on the one hand, to boost the severely hit French economy in the short term and, on the other, to change it over the long term by promoting investments in innovative industries and in ecological transformation and, at the same time, by creating fiscal incentives for companies. It consists of approximately 70 measures, which are focused on three main areas: restructuring the economy in ecological terms (EUR 30 billion), making companies more competitive (EUR 35 billion) and promoting social cohesion, particularly creating and preserving jobs (EUR 35 billion). To foster competitiveness, the production costs of companies are being reduced through substantially lower taxes (see the following article). In addition, the state-backed investment bank Bpifrance is providing government guarantees totalling EUR 3 billion for participation loans by banks and investment funds, which is intended to strengthen the equity base of French companies. Further billions are to be dedicated to support investment projects in key markets and to the relocation of strategically important industries. Moreover, SMEs are to receive assistance for their digital transformation.

Industry-specific support

*Recovery plan
France Relance*



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c. Tax relief

By *Jérémy Reis, Certified Public Accountant in France*

France has enacted tax relief in two phases: First, urgent measures were immediately taken in order to offset the short-term effects of the pandemic. Then, the above-mentioned stimulus programme *France Relance* was enacted to provide for long-term economic recovery.

Time limit extensions and payment deferrals

As a first step, the deadline for sole proprietorships to submit the income statement, which is normally due in May, has been extended to 30 June 2020 for companies experiencing difficulties as a result of the pandemic.

In addition, all companies experiencing financial difficulties could apply for a deferral of prepayments for corporation tax and trade tax until 30 June 2020. The May 2020 prepayment of *taxe sur les salaires* (taxes on paid salaries for companies that are not subject to VAT) could be postponed by three months.

With respect to the annual VAT return, which in France normally has to be submitted on 5 May, the fiscal administration granted an extension to all accountants if compiling the necessary documents was creating difficulties.

Deferral of tax liabilities

SMEs can apply to pay their tax liabilities in instalments over a period of 12, 24 or 36 months. This support measure relates to all taxes that were due between 1 March 2020 and 31 May 2020. The application must be submitted by 31 December 2020.

Lowering of the corporation tax rate

Even prior to the pandemic, a process had been under way to reform corporation tax in France. The corporation tax rate was lowered from 33.33% to 28% in 2020. Plans originally called for the tax rate to be lowered even further to 26.5% in 2021 and to 25% in 2022, but they were delayed. The planned reduction has now been implemented, meaning that companies are better able to combat the effects of the pandemic.

Tax measures under the stimulus programme

The plan *France Relance* calls for business taxes to be lowered on 1 January 2021.

In France, the *contribution économique territoriale* (CET) is equivalent to the German trade tax. It consists of CVAE (*cotisation sur la valeur ajoutée* – tax on added value) and CFE (*cotisation foncière des entreprises* – tax on real estate owned by companies). The government's efforts are essentially focused on these two taxes.

Above all, CVAE is to be lowered for all companies by 50%.

In addition, taxes on the ownership or use of land and buildings are being reduced by 50% for all industrial businesses (factories, production sites, etc.). Two taxes are concerned: CFE (see above) and land tax. Companies that own their business premises will benefit from the lowering of the land tax.

Another specific measure will be a limitation of CET. In France, the amount of CET, which is currently capped at 3% of gross value added, will be lowered to 2%. Specifically, this means that if the amount of a company's CET exceeds 2% of gross value added, it will receive a tax abatement. This relief can then be used to offset CFE.

These measures are principally directed at SMEs, which are often most at risk structurally in an uncertain economic environment.



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3. Italy

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Since the start of the coronavirus crisis, the Italian legislators have implemented a series of measures designed to provide financial support to companies.

a. Arrangements in insolvency law

With respect to the special arrangements in Italian insolvency law, a noteworthy development is the second decree on containment of the consequences of the pandemic (*Decreto Legge Liquidità* No. 23 of 8 April 2020), whose Article 5 postponed the entry into force of the reform of insolvency law until 1 September 2021. A key element of the reform, which was originally scheduled to enter into force on 15 August 2020, is the creation of an early-warning procedure using statutorily prescribed crisis indicators. In the current macroeconomic crisis, this early-warning system threatened to morph into a “fire accelerant”, so to speak, for insolvency proceedings.

In addition, Article 6 of *Decreto Legge Liquidità* suspends until 31 December 2020 the capital maintenance provisions in company law that apply to capital companies. This is intended to prevent the situation where, in the event that a company becomes overindebted, its management body is obligated to notify the commercial register that the company is being liquidated.

One matter of significance beyond 31 December 2020 is that pursuant to Article 7 of *Decreto Legge Liquidità*, companies are assumed for accounting purposes to have the status of a going concern with respect to the financial year ending on 31 December 2020, provided that such status was evident from the last balance

Entry into force of the reform of insolvency law postponed

Going concern assumed

sheet approved prior to the coronavirus crisis. This is intended to avoid companies affected by the coronavirus having to prepare financial statements on the basis of liquidation values, which in many cases would cause the company to become overindebted.

Article 8 of *Decreto Legge Liquidità* also has effects for insolvency law that extend beyond 2020. It specifies that shareholder loans granted in the period from 9 April 2020 to 31 December 2020 are not subject to subordination as would otherwise be required by statute. The consequence is that repayments on such shareholder loans cannot be avoided even where insolvency proceedings are commenced within 12 months thereafter.

Time limit extensions

Article 9 of *Decreto Legge Liquidità* has significant practical effects: The deadline for making payments in execution of preventive composition proceedings and agreements on debt restructuring that become due between 23 February 2020 and 31 December 2021 has been extended by six months. In addition, debtors can apply for a unilateral extension of up to six months of the time limits specified in the composition plan, provided that the application is made prior to the date for court confirmation of the plan, etc.

Composition with tax authorities

The reform to the institution of the “*transazione fiscale*”, or composition with tax or social insurance authorities, which took effect with the Legge 159/2020 on 4 December 2020, is particularly significant: In preventive composition proceedings and in debt restructuring agreements, the court can now give the necessary confirmation even if the required creditor majorities are not achieved because the authorities have not given their agreement; this applies on condition that the debtor can show, on the basis of a report prepared by an independent expert, that the proposed restructuring is more favourable for creditors than the liquidation of assets in the course of standard insolvency proceedings.

b. Arrangements in employment law

The special arrangements in employment law mainly relate to two topics:

Short-time working

Utilisation of the short-time working fund, which had already been expanded and simplified in the first decree on containment of the consequences of Covid-19 (*Decreto Legge Cura Italia* No. 18 of 17 March 2020), has been extended by the 2021 Budget Law (*Legge di Bilancio 2021*) and benefits can be drawn until 31 March 2021 (CIGO) or 30 June 2021 (CIGD).

Dismissal prohibitions

The prohibition of dismissals for reasons of redundancy was extended by the 2021 Budget Law and now applies until 31 March 2021 for all employers. The dismissal prohibition does not apply in the case of business closure or insolvency without business continuation (Article 14 of *Decreto Legge Agosto*).

The details are addressed in *Decreto Legge Agosto* and updated in *Decreto Ristori* (short-time working fund) and the *Legge di Bilancio 2021*.

c. Financial assistance

Micro-enterprises and SMEs can apply for a moratorium on termination of their loans and credit lines until 31 January 2021 and for suspension of their obligations to make loan and leasing payments (Article 65 of *Decreto Legge Agosto*). The 2021 Budget Law provides for an extension to the dismissal prohibition until 30 June 2021.

Liquidity support also takes the form of loan guarantees provided by SACE S.p.A. to help companies obtain bank loans with a maximum term of six years. The loan proceeds must be used for specific purposes described in detail in the law. In addition, the company must undertake not to distribute any dividends for 2020 (Article 1 of *Decreto Legge Liquidità*). The arrangements were initially scheduled to end on 31 December 2020, and were extended to 30 June 2021 by the *Legge di Bilancio* 2021. In addition, SACE has the power to grant guarantees beyond that date in favour of banks that finance companies based in Italy. The scheme has a total volume of up to EUR 200 billion, and guarantees, which can take any form, are provided under standard market conditions. The loan guarantees provided by SACE S.p.A. are backed by the Italian state (Article 2 of *Decreto Legge Liquidità*).

In addition, the Central Guarantee Fund for SMEs (*Fondo centrale di garanzia PMI*) is providing commission-free guarantees for loans of up to EUR 5 million in order to make it easier for SMEs to obtain bank loans (Article 13 of *Decreto Legge Liquidità*). The arrangement was scheduled to end on 31 December 2020 and was extended to 30 June 2021 by the *Legge di Bilancio* 2021.

The system for insuring and reinsuring political, financial, and trade-related risks to which Italian companies are exposed in connection with international transactions is being reformed effective 1 January 2021 (Article 2 of *Decreto Legge Liquidità*). Henceforth, the Italian state will assume 90% of the commitments under trade credit insurance policies, with SACE S.p.A. assuming the remaining 10%. SACE S.p.A. plans to prioritise the sectors of the Italian economy that are strategically important (agriculture, food, fashion, Made in Italy), as well as companies that do business with strategic trading partners.

Decreto Legge Rilancio No. 34/2020 of 19 May 2020 (particularly Article 25) and *Decreto Legge Agosto* (particularly Articles 9 et seq. and 58-59), plus the total of four *Decreti Legge Ristori* Nos 137, 149, 154 and 157, provide for a number of non-repayable grants for companies and self-employed professionals who have suffered turnover losses as a result of the coronavirus crisis.

In addition, SMEs whose turnover for the period from 1 March 2020 to 30 April declined by 33% compared with the previous year and that implement capital increases of at least EUR 250,000 in the period from 20 May 2020 to 31 December 2020 can take advantage of tax credits for (i) capital increases and (ii) losses suffered in the 2020 financial year. A fund has also been established for purchasing bonds issued by SMEs (Article 26 of *Decreto Legge Rilancio*).

Liquidity support

Support for export and internationalisation

Company capitalisation and non-repayable grants

In addition, the above-mentioned provision in Article 8 of *Decreto Legge Liquidità* also serves to support the capitalisation of companies by exempting shareholder loans that are granted in the period from 9 April 2020 to 31 December 2020 from subordination that would otherwise be required by law. This is intended to encourage shareholders to provide their companies with fresh funds.

d. Tax relief

Suspension, deferral and cancellation of payment obligations

Particularly in the *Decreti Legge Cura Italia, Liquidità, Rilancio* and *Ristori*, the Italian legislators temporarily suspended or deferred a variety of taxes that are due in 2020. In addition, for companies with turnover of EUR 250,000 or less, Article 24 of *Decreto Legge Rilancio* cancelled the obligation to pay the last instalment of trade tax for 2019 and the first advance payment of trade tax for 2020.

In addition, companies have been granted tax credits for a number of expenses, primarily:

- commercial rent for the months of March 2020 to December 2020 (the duration depends on the industry) (Article 28 of *Decreto Legge Rilancio*);
- costs for making structural modifications to businesses and disinfecting them for the purpose of Covid-19 prevention (Articles 120 and 125 of *Decreto Legge Rilancio*);
- investments in hotel facilities, thermal swimming pools and open-air lodgings that are or were made in 2020 and 2021. The tax credit amounts to 65% of the investment amount (Article 79 of *Decreto Legge Agosto*).

Of particular practical importance is Article 147 of *Decreto Legge Rilancio*: In order to support the liquidity of companies, tax assets of up to EUR 1,000,000 (particularly VAT claims, which in Italy often take months to be paid out and in many cases require the posting of collateral) can be used to offset tax liabilities in 2020. Previously the offset was limited to EUR 700,000.

Superbonus 110%

Investments are being encouraged with the introduction of a “superbonus” of 110% (Article 119 of *Decreto Legge Rilancio*) that is paid on investments for

- measures to make buildings more energy efficient:
 - thermal insulation
 - replacement of heating systems
- measures to make buildings more resilient to earthquakes
- roof-mounted PV systems
- charging stations for electric cars

that are made in the period from 1 July 2020 to 31 December 2021.

The “superbonus” is available to condominium associations, consumers and charitable organisations, but not to companies.

It allows owners to deduct an amount equal to 110% of the permitted investment from their tax liability in five equal annual instalments.

As an alternative to a tax deduction, owners can obtain a credit from the supplier of the eligible investment assets in the form of an invoice deduction. It is also possible to assign the tax credit in exchange for payment.

Companies in the tourism, trade fair and cinema, theatre and concert industries are released from the obligation to pay the second instalment of land tax (IMU) (Article 78 of *Decreto Legge Agosto*). For cinema, theatre, exhibition and concert businesses, this exemption also covers 2021 and 2022.

The carrying amount of a company’s fixed assets can be increased in the balance sheet as at 31 December 2020. If the increase in the carrying amount is also undertaken for tax purposes, a substitute tax equal to 3% of the increase in value is owed (Article 110 of *Decreto Legge Agosto*).

Waiver of land tax for 2020, 2021 and 2022

Increase of carrying amounts



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4. Netherlands

By Dr Michael Rozijn, Attorney-at-Law in Germany and Certified Specialist in IT Law

On 12 March 2020, the Netherlands announced the first measures to combat the economic consequences of the coronavirus pandemic, such as a broad tax deferral. Shortly thereafter, on 17 March 2020, the Dutch government enacted an initial comprehensive aid package. On 28 August 2020, the government announced a third aid package, whose longer-term measures will be in effect into 2021. In light of the second wave of the pandemic and a further partial lockdown, at the end of 2020 the government announced further aid for particularly hard-hit sectors.

Applications for the commencement of insolvency proceedings: restraint

a. Arrangements in insolvency law

As mentioned above, because there is no obligation under Dutch insolvency law to apply for commencement of insolvency proceedings, it was not possible to protect companies from the effects of the pandemic through any sort of suspension. However, since issuance of the state-ordered coronavirus restrictions, courts have been practising restraint with respect to applications for enforcement and for commencement of insolvency proceedings that are directed against companies. With the Temporary law on Covid-19 on matters in the field of the Ministry of Social Affairs and Employment and the Ministry of Justice and Security (*Tijdelijke wet COVID-19 SZW en JenV*), the legislator has now provided a statutory basis for this practice. According to this law, the court is authorised upon application by the debtor to suspend a creditor's application for commencement of insolvency proceedings by two months, with the option to extend the suspension by up to two additional months. This is not a blanket moratorium, since the judge remains obligated to balance the interests of the debtor against those of the creditors. If the application is approved, the court can grant the debtor a civil-law deferral of delinquent claims of the creditor lodging the application under suspension of the rules on late payment. In addition, the court can suspend the creditor's enforcement measures. The latter also applies to debtors against whom an application for commencement of insolvency proceedings has not been filed. In the case of subsequent insolvency, the avoidance of payments made by the debtor during the period of the payment moratorium is suspended. The statutory measure is now scheduled to expire on 1 April 2021, but can be further extended for two-month periods by regulation.

Because of the coronavirus pandemic, the legislators expedited the already initiated legislative procedure concerning the introduction of the Dutch Act on the Confirmation of Out-of-Court Plans (*Wet homologatie onderhands akkoord*, WHOA), which entered into force on 1 January 2021. With the WHOA, the Netherlands have implemented a preventive restructuring framework which is intended to satisfy the requirements of Directive (EU) 2019/1023 on preventive restructuring frameworks and insolvency. As a preventive tool, the WHOA is applicable alongside the two current standard proceedings, namely *faillissement* (insolvency) and *surseance van betaling* (moratorium on payments). The new arrangements have been integrated into the Dutch Insolvency Act (*Faillissementswet*). Until now, there has been no obligation under insolvency law to conclude a composition agreement outside of insolvency proceedings. The new arrangements enable companies that are in distress and facing insolvency to restructure their debts outside of court insolvency proceedings by reaching a settlement with creditors. If one of the classes of creditors formed during the proceedings consents to the restructuring agreement, the agreement can be submitted to the court for confirmation (Dutch: *homologatie*). Once it is confirmed by the court, the agreement is binding on all creditors and shareholders involved in the proceedings, even if they object (Dutch: *dwangakkoord*). A further pandemic-related support measure introduced by the Dutch legislators is the "time out arrangement" (TOA), which allowed companies to prepare the settlement even before the WHOA entered into force on 1 January 2021, i.e. to devise and implement measures so that the settlement could be submitted to the court for confirmation immediately from 1 January.

b. Arrangements in employment law

The Temporary Emergency Bridging Measure to Preserve Employment (*Tijdelijke Noodmaatregel Overbrugging voor Werkgelegenheid*, NOW) introduced an arrangement, new to the Netherlands, that is comparable to the German instrument of short-time working. It enables the Dutch state to grant a subsidy to companies to cover their wage costs where, as a result of the coronavirus, they are expecting a loss of turnover of at least 20% (from the second quarter of 2021: 30%) over a period of three consecutive months. The subsidy amounts to 80% (until Q1 2021) or 60% (Q2 2021) of wage costs, depending on the extent of the losses, plus a supplement of 40% for other employer costs, such as pension contributions. In parallel with these subsidies, employers can also reduce wages by 10% (until the first quarter of 2021) without any effect on the NOW subsidy. An advance payment of 80% is made on the subsidy in three instalments. In case of subsidies of EUR 100,000 (or more), or where the final subsidy amounts to EUR 125,000 (or more), it is conditioned on the company suspending dividend and bonus payments for 2020 until the shareholders' meeting in 2021. The arrangement was extended on 1 October 2020 and now applies until 1 July 2021 in three-month phases (NOW 3.0).

Short-time working introduced

c. Financial assistance

As is also the case with many other countries, the Netherlands are making huge amounts of money available through numerous funding programmes in order to aid their economy. As of early December 2020, EUR 33.7 billion of aid had been disbursed, out of a normal state budget of about EUR 300 billion. A further EUR 3.7 billion in aid was in prospect as of early December 2020. As of October 2020, assistance for 2021 was expected to amount to an additional EUR 14.4 billion. The bulk of the programme funding is dedicated to subsidies, such as for NOW, the short-time working programme (see above). In addition, guarantees totalling EUR 33 billion are being given for companies (inter alia, for Koninklijke Luchtvaart Maatschappij N.V. – KLM) and for EU programmes. With the third aid package another focus is laid on investments in public infrastructure projects and innovative companies.

Coverage under existing state guarantees for SME loans (*Borgstelling MKB-kredieten*, BMKB) has been expanded from 45% to 67.5% (currently, BMKB-C). As a result, it is possible to fund bridging loans and overdraft facilities of up to EUR 1.5 million. SMEs (including self-employed professionals) make up about 99% of all businesses in the Netherlands and generate roughly 60% of the country's turnover. BMKB-C is scheduled to run until the end of 2021.

Guarantees for SME loans

A funding programme has also been established to provide industry-specific support for sectors that have been hit especially hard by the governmental coronavirus restrictions, such as the hospitality industry. The Reimbursement for Entrepreneurs in Affected Sectors Covid-19 scheme (*Beleidsregel tegemoetkoming ondernemers getroffen sectoren COVID-19*, TOGS), which has since expired, provided for a one-time grant of EUR 4,000 for SMEs. The successor programme,

Aid programme for especially hard-hit industries

Reimbursement of Fixed Costs for SMEs , supports SMEs and the self-employed by providing funding for other fixed costs (not including personnel costs) of up to EUR 90,000 – depending on the loss of turnover – for three-month periods. The scheme applies until 1 July 2021. In the final quarter of 2020 and the first quarter of 2021, the fixed costs support is available to companies in all sectors. There is also further specific assistance available to companies in the hospitality and events industries.

Self-employed professionals

The Temporary Bridging Measure for Self-Employed Professionals (*Tijdelijke overbruggingsregeling zelfstandige ondernemers, Tozo*) provides assistance to self-employed professionals, who ultimately account for two-thirds of all businesses in the Netherlands. The assistance takes the form of grants for income support and three-year business loans of up to EUR 10,157 that have a 2% annual interest rate. To be eligible, applicants have to show that liquidity problems are a consequence of the pandemic. From the second quarter of 2021, checks on liquid assets will be carried out in advance also. The assistance is paid out by the municipality, and in the event of insolvency, it can demand immediate repayment of the loan. The third phase of the programme (Tozo 3.o) began on 1 October 2020; the fourth version (Tozo 4) will run from 1 April 2021 to 1 July 2021. Municipalities are also offering additional assistance in the form of measures designed to support self-employed entrepreneurs with advanced training, retraining and reorientation.

State guarantees

To assist larger companies, the Guarantee Business Financing scheme (*Garantie Ondernemersfinanciering, GO*) has been expanded (currently, GO-C). With GO-C, the state guarantees loans of EUR 1.5 million to EUR 150 million that are obtained by profitable companies from approved lenders. The guarantees cover 80% or 90% (instead of the customary 50%) of the loan amount. GO-C will run until 1 July 2021. BMKB-C and GO-C are not available for financial or property-management companies, among others.

KLM Airlines

KLM Airlines is receiving support totalling EUR 3.4 billion in the form of loans and guarantees. The airline, which is one of the largest employers in the Netherlands, is owned by the holding company Air France-KLM S.A., in which the Dutch state maintains a 14% stake. The assistance is tied to a number of conditions, with a government state agent monitoring compliance.

d. Tax relief

The range of economic policy tools deployed by the Netherlands in order to support the economy in the face of the coronavirus pandemic also includes tax measures. Until 1 April 2021, taxpayers can apply for a three-month deferral of income tax (*inkomstenbelasting*) and corporation tax (*vennootschapsbelasting*), as well as a number of other taxes, including indirect taxes such as VAT, wage tax and energy tax. Dividend tax and social insurance contributions are excluded. In addition, certain administrative obligations with respect to wage tax are suspended for the same period.

One tax-related support measure that the Dutch legislators declined to introduce was a temporary general lowering of the current VAT rates of 21% and 9%. VAT has been reduced from 21% to 0% until 1 April 2021 for the purchase of face masks, coronavirus test kits and vaccines. In keeping with an initiative of the European Commission, the donation of medical supplies and equipment and the provision of medical personnel were also made exempt from VAT. The majority of these measures were executive orders, not laws.

No general lowering of the VAT rate

Once a company has received its tax assessment after submitting its tax return, it can apply to defer its tax liability for three months, with the ability to apply for an extension when the deferral expires. Where the tax liability is less than EUR 20,000, the company needs only to declare that its turnover has declined in order to qualify for the extension. In the case of a higher tax liability, the extension application must include confirmation by an outside professional (certified public accountant, tax advisor) that the fall in turnover was primarily attributable to the coronavirus crisis. Other conditions for an extension of the deferral are undertakings by the company to refrain from paying bonuses and dividends and from repurchasing its shares. In addition, the interest rate charged for late payment of taxes (*invorderingsrente*) has been lowered from 4% to 0.01% until 31 December 2021. Furthermore, for 2020, the interest rate charged for underpaid taxes (*belastingsrente*) was temporarily reduced in the same way, and the default penalty (*verzuimboete*) was suspended as well. The taxpayer and the fiscal administration can agree on a flexible three-year payment plan for the deferred taxes for the period between 1 July 2021 and 1 July 2024.

For the 2020 tax year, the percentage for tax-free benefits to employers (*werkkostenregeling*) has been extended from 1.7% to 3% of the wage.

With regard to corporation tax for 2019, the ability to carry back the coronavirus losses expected for 2020 has been simplified by means of what is known as the “coronavirus reserve”.

Over 185,000 companies, or nearly one out of every 10 businesses in the Netherlands, have been granted a tax deferral. As of 7 October 2020, deferrals totalled EUR 8.73 billion. Because of the number of insolvencies that are expected to occur in the meantime, the Ministry of Economic Affairs anticipates that somewhere between 4.2% and 9.4% of the deferrals will ultimately involve de facto grants.

Beneficiaries



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5. Poland

By Dr Alexandra Josko de Marx, Attorney-at-Law in Germany

Introduction

On 13 March 2020, the Polish Health Ministry announced that a state of epidemic threat was in effect until further notice as a result of the SARS-CoV-2 pandemic, which was followed on 20 March 2020 by the announcement of a national epidemiological emergency. On 18 March 2020, the Polish government introduced a package of measures known as the *tarcza antykryzysowa* (Anti-Crisis Shield) designed to mitigate the economic consequences of the pandemic. The measures have been regularly updated. With a total volume of PLN 312 billion (roughly EUR 68 billion) it is intended to provide assistance to the Polish economy. The most recent addition (the Anti-Crisis Shield 6.0) was published in the Polish law gazette on 15 December 2020. Among other things, it expands the category of companies entitled to apply for employee salary grants and contains provisions regarding exemptions from social security contributions and granting of micro-loans.

a. Arrangements in insolvency law

Suspension of the obligation to apply for commencement of insolvency proceedings

As part of the emergency legislation, the Anti-Crisis Shield covers special measures relating to insolvency law. For instance, Article 15zzra of the Polish Act of 2 March 2020 on Specific Arrangements to Avert, Prevent and Combat Covid-19, Other Communicable Diseases and the Crises Caused by Them (*Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych*) suspends the obligation set down in the Polish Insolvency Code to apply for commencement of insolvency proceedings within 30 days of the occurrence of illiquidity or overindebtedness. This period now does not begin to run, or is interrupted, if material insolvency was caused by the pandemic, which is assumed to be the case if illiquidity occurred during the epidemiological emergency. In evaluating illiquidity, 12 March 2020 is used as the cut-off date.

Introduction of simplified out-of-court restructuring proceedings

In June 2020, the Sejm enacted an update of the Anti-Crisis Shield that, among other things, introduced simplified out-of-court restructuring proceedings as a complement to the existing proceedings. They make it possible to undertake a restructuring – for now, until 30 June 2021 – by means of composition/plan proceedings under which the debtor is given one opportunity to negotiate with its creditors with the aim of concluding a settlement without the need for the court to formally commence proceedings. At the same time, the debtor is granted a stay on enforcement actions and protection against termination of contracts. Instead of formal proceedings, an agreement is concluded with a state-approved restructuring advisor, who then supervises the proceedings. Following mandatory publication of the proceedings in the Official Court and Commercial Gazette and notification of the court responsible for approving the proceedings (with the restructuring advisor being required to provide such notification within three days of announcement of the proceedings), the debtor has four months to

conclude the settlement and have it approved. If this deadline lapses without a result, the proceedings are terminated ex officio.

b. Arrangements in employment law

Polish employment law essentially does not provide for a temporary reduction in regular working time as a result of an economic crisis, comparable to short-time working under German employment law. However, in order to preserve jobs during the pandemic, support measures for employers were recently introduced, such as in the form of grants from the guaranteed employee benefits fund (FGŚP). In addition, temporary restrictions on dismissals for reasons of redundancy have been put in place.

The recent measures also provide assistance to employers that are experiencing a decline in their revenues from the sale of goods and services as a result of the Covid-19 pandemic. For a period of six months, they have the ability to reach an agreement with the employee representatives on reducing working hours or introducing a period of economic standstill. In addition, employees can be compelled to take up to 30 days of outstanding holiday (i.e. holiday that has not been taken in past years) even without their consent. Moreover, employers are allowed to suspend the application of certain provisions in collectively bargained agreements and provisions in the company's social-benefits fund, as well as remuneration arrangements, constituting a significant curtailment in the protection of employee rights.

c. Financial assistance

With the several iterations of the Anti-Crisis Shield, the Polish government has made a variety of instruments available in recent months to support all types of entrepreneurs, from micro-enterprises and SMEs to large enterprises. The Financial Shield (*Tarcza Finansowa*), which currently has a volume of approximately PLN 100 billion, targets the roughly 670,000 Polish companies whose turnover has fallen as a consequence of the Covid-19 crisis.

Depending on their size, companies can apply with the Polish Development Fund (*Polski Fundusz Rozwoju*) for a variety of subsidies, including low-interest loans, liquidity assistance and financial salary subsidies, some of which do not need to be repaid. In order to qualify, a company must meet several conditions: (i) in any given month after 1 February 2020, it must have recorded a decline in turnover of at least 25% compared with the same month in the previous year or with the previous month, with the decline being attributable to Covid-19; (ii) it must not be in the midst of restructuring, insolvency or liquidation proceedings at the time when the application is filed; (iii) it must have been conducting business operations in 2019 and not owe any taxes or social insurance contributions for that year; and (iv) it must be domiciled in Poland for tax purposes. The amount of the financial subsidies depends on the number of employees and the decline in turnover.

Grants for workers from the guaranteed employee benefits fund

Financial Shield with a volume of PLN 100 billion

Subsidies from the Development Fund

Support programmes for large enterprises

Affected companies in specific sectors, such as tourism, the hotel trade and the trade fair sector, can on application be exempted for payment of social insurance contributions for a period of three months, and can also apply for further support. Other companies have the option of applying for an extension of time to pay these contributions or to pay them in instalments. In addition, micro-entrepreneurs who employ at least one person can apply for a one-time micro-loan to cover their operating costs. This is granted out of the Labour Fund resources for at most 12 months, with no payment of principal for six months. Under certain circumstances, the loan does not need to be repaid.

Under the support programmes, large enterprises can receive preferential interest rates on liquidity loans and obtain loans at preferential terms. Other capital-related instruments are also available to them under these programmes, such as the ability to implement capital increases. Furthermore, banks can also modify the terms or repayment dates of loans granted to micro-enterprises and SMEs to the benefit of the latter. The Anti-Crisis Shield 4.0 moreover introduced another series of subsidy mechanisms, including for loans that have already been granted. The interest subsidies amount to 2% for micro-entrepreneurs and SMEs and 1% for other entrepreneurs.

Increase in unemployment benefits

In addition, in June 2020 Poland introduced further subsidies for workers who were dismissed after 15 March. The subsidies ran for a period of three months. Furthermore, from September 2020, unemployment benefits were increased to PLN 1,200 (approximately EUR 270) for the first 90 days and to PLN 942.30 (approximately EUR 214) thereafter.

d. Tax relief

Enterprises can offset losses incurred in 2020 against 2019 income by retroactively taking a tax loss deduction from non-agricultural employment on income tax and corporation tax. In order to do so, they need to have finalised their annual financial statements for 2020. The tax credit is available only if revenues in 2020 are at least 50% lower compared with 2019. Furthermore, income can be reduced one time by up to PLN 5,000,000.

Cancellation of arrears

Entrepreneurs who as a result of the Covid-19 pandemic are experiencing problems paying their tax liabilities on time can apply to have all or some of the arrears cancelled. They can also apply to have tax audits, tax proceedings and fiscal and customs inspections suspended for the duration of the epidemic.

Certain (material) donations made “in the fight against COVID-19” can now be deducted from the tax base.

The application of the provisions on so-called irrecoverable claims will be waived for taxpayers with respect to income tax and corporate income tax prepayments if, as a result of COVID-19, the taxpayer’s income in 2020 will be at least 50% lower than in the previous fiscal year. This also applies to taxpayers subject to lump sum taxation.

In addition, the following tax deadlines were changed for companies that have suffered negative economic consequences from the pandemic. In detail, these include:

- The deadline for making income tax prepayments for the months of March and April 2020 was postponed.
- The deadline for paying tax on income from rental and commercial use of buildings for the months of March to May 2020 was postponed to the extent that revenues for the month in question have fallen by at least 50% compared to 2019.
- So-called “small” (corporation) taxpayers who decided to make tax prepayments in simplified form can opt out for the period March to December 2020 in order to improve their liquidity. Their monthly prepayments for this period will then be calculated on the basis of actual income.
- Municipalities were given the authority to extend to 30 September 2020 the payment deadlines for land tax instalments due in April, May, and June 2020. They can also decide to exempt commercially used properties from land tax for a certain period.
- The deadline for submitting the corporate tax return CIT-8 was extended for NGOs.
- After initially being deferred, the obligation of large enterprises to submit the new matrix for VAT rates went into effect on 1 July 2020.
- Suspension of retail tax: Taxpayers are not required to pay any taxes for the assessment periods July to December 2020, i.e. application of the retail tax rules was postponed from 1 July 2020 to 1 January 2021.
- From 1 March 2020 to 31 December 2020, income from the ownership of buildings is exempt from tax.

The tax authorities do not charge any additional (extension) fees or interest if payment deadlines are postponed or in the case of instalment payments if the application is submitted in good time. During the epidemic emergency, procedural deadlines are suspended in certain tax matters.



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