



# Global Tax Policy in the Age of Covid-19—Common Issues, Varying Responses

**NYSBA Co-Sponsors:**  
International Section  
Committee on Continuing Legal  
Education



During each program segment a verification letter code will be displayed.

Materials are available at the Learning Dashboard.

---

[www.nysba.org](http://www.nysba.org)



# GLOBAL TAX POLICY IN THE AGE OF COVID-19

*COMMON ISSUES, VARYING RESPONSES*

## Program Co-Chairs

**Stanley Ruchelman**  
*Ruchelman P.L.L.C.*

**Peter Utterstrom**  
*Peter Utterstrom Advokat AB*

## Speakers

**Galia Antebi**  
*Ruchelman P.L.L.C.*

**Petra Eckl**  
*GSK Stockmann*

**Marco Valdonio**  
*Maisto e Associati*

**Maria Chang**  
*Bae, Kim & Lee L.L.C.*

**Gary Ashford**  
*Harbottle & Lewis L.L.P.*

**Werner Heyvaert**  
*AKD, Brussels*

**Carl-Olof Bouveng**  
*Cirio Advokatbyrå AB*

**Vinicius Jucá Alvez**  
*Tozzini Freire Advogados*

**James R. Shorter, Jr.**  
*Shorter Law Offices*



# O.E.C.D. Policies for Stranded Workers

**Galia Antebi, Ruchelman P.L.L.C.**  
New York

## O.E.C.D. Policies for Stranded Workers | O.E.C.D. Guidance

# O.E.C.D. Guidance

- ▶ As workers have to stay at home and telework, many tax issues arose
  - ▶ For individuals employment income, the change may have an impact on a country's right to tax the income under international tax treaty
  - ▶ Individual's residency status may change
  - ▶ For corporations, the presence of employees and agents in foreign countries can create a permanent establishment ("P.E.") or affect tax residence where the test is based on the place of "effective management"
- ▶ Jurisdictions are encouraged to adopt guidance on whether changes in work practice prompted by COVID-19 can result in creation of P.E. or affect an individual's residency or taxation
- ▶ The O.E.C.D. offers guidance on interpretation of tax treaties during the temporary period where public health measures are in effect and provides examples as to how several jurisdictions addressed the impact of COVID-19
- ▶ The guidance aims to prevent double taxation but not encourage double non-taxation

## O.E.C.D. Policies for Stranded Workers | Creation of a Permanent Establishment

# Creation of a Permanent Establishment

- ▶ A home office may be a P.E. if it is used on a continuous basis for carrying of the business of the enterprise and the enterprise has required the individual to use that location to carry on the enterprise's business
- ▶ The O.E.C.D.'s guidance suggests that the temporary nature of presence in foreign jurisdiction due to public health measures should not create a P.E.
  - ▶ Home offices used during a pandemic are not used at the requirements of the enterprise
  - ▶ Home offices used during a pandemic generally lack the required degree of permanency or continuity
  - ▶ Home offices generally are not at the disposal of the employer
- ▶ If the change is permanent and the employee continues to work from home after the pandemic, determining whether the home office can be viewed as at the disposal of the enterprise requires further examination of the facts and circumstances



## O.E.C.D. Policies for Stranded Workers | Construction Site P.E.

# Construction Site P.E.

- ▶ A construction site can be a P.E. if it lasts for more than 12 months
- ▶ The Model Treaty provides that the clock doesn't stop when work is temporarily discontinued for reasons such as weather or shortage in materials
- ▶ O.E.C.D. April guidance was in line
- ▶ The O.E.C.D. January 2021 guidance suggests that jurisdictions consider “stopping the clock” in light of the extraordinary circumstances where operations are prevented as a result of public health measures imposed or recommended by the government where the site is located

## O.E.C.D. Policies for Stranded Workers | Change in Residence?

# Change in Residence?

- ▶ In some jurisdictions, residence of companies depends on the location of effective management
- ▶ The concern is that presence of board members and other senior executives in other jurisdictions can cause companies to be treated as having shifted effective management to a different jurisdiction
- ▶ Under treaties, it is unlikely to occur due to the temporary nature of the changes in the location
- ▶ Facts and circumstances control and those seek to determine the usual and ordinary place of effective management, not the one pertaining to an exceptional period



## O.E.C.D. Policies for Stranded Workers | Creation of Residence for Individuals

# Creation of Residence for Individuals

- ▶ The concern is that an individual's presence in a foreign jurisdiction for a certain number of days may create statutory residence in this foreign jurisdiction
- ▶ Additionally, there is a concern that an individual who works at a jurisdiction and acquires residence status in that jurisdiction, but who returns to the previous home jurisdiction due to the pandemic, will be considered never to have lost his status as a resident of his previous home jurisdiction or if lost, to regain residence upon return to his old home
- ▶ The O.E.C.D. suggests that the temporary change should not result in change of residence under the tiebreaker provision of treaties because the tests are applied in a manner that considers normal periods
- ▶ However, the O.E.C.D. warns that a different approach is appropriate if the change becomes permanent when the restrictions are lifted

## O.E.C.D. Policies for Stranded Workers | Income for Employment

# Income for Employment

- ▶ The concern is that employment income of cross border workers will be taxed both in the residency state and the source state
- ▶ Normally, under treaty, wages are taxed only in the residence country, provided the employee is not present in the source country for more than 183 days or works for a local employer in the source country; due to COVID-19, it is expected that some individuals may have failed to leave the source country thus allowing the source country to tax their income from employment
- ▶ The O.E.C.D. suggest treating subsidy payments (payments made despite being unable to work) as attributable to the place where the employment was regularly exercised prior to the pandemic
- ▶ Other payments should be taxed by the residence country, disregarding the day count in cases where the employee is stranded in the source country and would have left but for the pandemic
- ▶ This recommendation should apply when the individual is stranded but may not apply if the individual does not travel based on a mere recommendation by the governments involved to avoid unnecessary travel



# Treatment of Frontier Workers

**Petra Eckl, Partner GSK Stockmann**  
Frankfurt

## Treatment of Frontier Workers | Basics – Frontier Workers

# Basics – Frontier Workers

- ▶ “Frontier Workers” (“*Grenzgänger*”) are usually defined as follows:
  - ▶ **Residence in a certain area near the border** (zone of 20 to 30 km)
  - ▶ **Employment** in the other country near the border (same zone)
  - ▶ Employee **returns every day after the work** to the country of residence
  - ▶ Stay in the country of employment due to business trips, professional festivities irrelevant; details sometimes unclear; usually not detrimental if only a **certain number of no-returns** within one year
  - ▶ Sometimes **special provisions** for **executive** employees
  - ▶ The right to tax the employment income usually is with the **country of residence**
- ↔ “Frontier Commuters” (“*Grenzpendler*”) – right to tax in country of employment

## Treatment of Frontier Workers | Special Frontier Workers D.T.T. Provisions

# Special Frontier Workers D.T.T. Provisions

- ▶ Countries where the German D.T.T. provides for special Frontier Workers provisions:
  - ▶ **France** (Art. 13 (5) DTT; Decree of 3 April 2006, BStBl I 2006, 304): in principle zone of approx. 20 km; limit of 45 no-return-days; work in a third country also qualifies as “no-return-day”
  - ▶ **Austria** (Art. 15 (6) DTT; consultation agreement of 20 December 2010, and regulation, BGBl 2010 I, 2185), zone of 30 km; special provision for managing directors with more than 25% participation (country of employment); limit of 45 no-return-days; work in a third country also qualifies as “no-return-day”; special mutual understanding that remote work at home is considered as a no-return-day
  - ▶ **Switzerland** (Art. 15a DTT; Adm. Decree of 19 September 1994, BStBl I 1994, 683; consultation agreement of 20 December 2010, BGBl I 2010, 2187); limit of no-return-days of 60 days; special provisions for executive employees; no special border zone; right to tax is with country of residence; however, W.H.T. of 4.5% of gross income with the country of employment with tax credit in country of residence)

## Treatment of Frontier Workers | Frontier Commuters

# Frontier Commuters

- ▶ “Frontier Commuter” (“*Grenzpendler*”) are usually defined as follows:
  - ▶ **Employment** in another country that is not the country of residence
  - ▶ General rule: Art 15 (1) DTT: if work is performed in the country of employment
    - ▶ right to tax with country of employment
  - ▶ Exception: Art. 15 (2) DTT: right to tax with country of residence
    - ▶ (i) if employee does not spend more than 183 in country of employment
    - ▶ (ii) if the salary is not paid by, or on behalf of, an employer in the country of employment and
    - ▶ (iii) not by a P.E. in the country of employment
- ▶ The right to tax the employment income is usually with the **country of employment**

## Treatment of Frontier Workers | No Special Frontier Workers D.T.T. Provision

# No Special Frontier Workers D.T.T. Provision

- ▶ Countries where the German D.T.T. do **not provide for special provisions for frontier workers** (“*Grenzgänger*”):
  - ▶ **Belgium**
  - ▶ **Czech Republic**
  - ▶ **Denmark**
  - ▶ **Netherlands**
  - ▶ **Poland**
  - ▶ **Luxembourg** – however, consultation agreement: if employee spends less than 20 days in the country of residence (Germany) or in a third country, tax-exemption in Germany if salary is taxed in Luxembourg
- ▶ So-called “**frontier commuters**” (“*Grenzpendler*”) concept applies under those DTTs: basically, the **country of employment** has the right to tax the employment income
- ▶ Upon application, country of employment provides E.U. conform unlimited taxation income tax benefits if at least 90% of income there or outside income < tax-free allowance country of employment
- ▶ **Tax-exemption** with progression with respect to the individual income tax rate in **country of residence**
- ▶ However, taxation in residence country if 183-days-rule, if Art 15 (2) DTT is met

# Special COVID-19 Consultation Agreements

- ▶ **Austria**, Consultation Agreements of 16 April 2020 and 27 October 2020, 16 January 2021
- ▶ **France**, Consultation Agreement of 13 May 2020, 23 October 2020
- ▶ **Switzerland**, Consultation Agreements of 11 June 2020 and of 3 December 2020 (also agreement concerning railroad personnel of Deutsche Bahn AG and Schweizerische Bundesbahn AG)

-----

- ▶ **Belgium**, Consultation Agreements of 6 May 2020, 20 May 2020, 22 June 2020, 24 August 2020, 11 December 2020
- ▶ **Luxembourg**, Consultation Agreements of 3 April 2020, 7 October 2020
- ▶ **Netherlands**, Consultation Agreements of 6 April 2020, 20/22 October 2020 and 9 December 2020
- ▶ **Poland**, Consultation Agreement of 12/27 November 2020



## Treatment of Frontier Workers | Content

# Content

### ▶ **Factual fiction:**

- ▶ Days, on which frontier workers or commuters work remotely as a consequence of the recommendation of the health authorities to work from home due to infection risk, **are considered as being spent** in the state **where the work would have been done without COVID-19** related measures
- ▶ Fiction does **not apply for days which would have been spent at home or in a third state anyway** irrespectively of the COVID-19 circumstances
- ▶ Fiction is optional
- ▶ Employee must prepare **proper documentation** about the time; **employer must confirm this**
- ▶ In all agreements: if work is **not taxed** (i.e. included in tax base), **no fiction**
- ▶ **Temporary fiction:** during the COVID-19 pandemic (in some agreements prolongations until 31 March 2021, in some automatic prolongation)



**THANK YOU  
FOR YOUR ATTENTION!**



# Bilateral Advance Pricing Agreements

**Marco Valdonio, Maisto e Associati**  
Milan

## Bilateral Advance Pricing Agreements | Existing B.A.P.A.s

# Existing B.A.P.A.s

### ▶ Points of attention:

- ▶ Review of any changes to functional/risk profiles of the parties to the transaction
- ▶ Duty to inform the tax authorities
- ▶ Update benchmark analyses
- ▶ Consideration of State or intragroup subsidies
- ▶ Option/Room to switch to a term test if the B.A.P.A. is based on annual tests

### ▶ O.E.C.D. Transfer Pricing guidelines:

- ▶ Before imposing unilateral changes, tax administrations shall consult each other (para. 75 of Annex II to Ch. IV)
- ▶ Such consultation is mandatory in some bilateral or multilateral APAs (para. 66, item e) of Annex II to Ch. IV)

### ▶ O.E.C.D. guidance on implications of the COVID-19 pandemic:

- ▶ Taxpayers and tax administrations cannot automatically disregard or alter the terms of existing A.P.A.s due to the change in economic circumstances or business results, unless a breach of critical assumption has occurred

## Bilateral Advance Pricing Agreements | Existing B.A.P.A.s

# Existing B.A.P.A.s

- ▶ In case of breach in the critical assumptions:
  - ▶ Revision - amendment of terms, conditions and remuneration
  - ▶ Cancellation/Revocation - in case of material breach and failure to comply to any term or condition of the agreement
- ▶ Different approaches from the tax administrations:
  - ▶ Refusal to amend the concluded APAs
  - ▶ Collaborative approach and willingness to review existing A.P.A.s
- ▶ Any re-negotiation would be quite time consuming and costly

## Bilateral Advance Pricing Agreements | Pending B.A.P.A. Discussions

# Pending B.A.P.A. Discussions

### Alternatives:

1. Short-period B.A.P.A. covering the period affected by the COVID-19 pandemic plus separate B.A.P.A. covering the post-COVID period
2. One single B.A.P.A. for the whole period (i.e. 2020-2024) with an annual report regarding the relevant impacts of the COVID-19 pandemic and, when appropriate, retrospective adjustments
3. Extension of period to mitigate the short-term effect of the pandemic
4. Withdrawal (but fees will likely not be refunded); care to be taken regarding the confidentiality issues of the information provided to the tax authorities

**Bilateral Advance Pricing Agreements | M.A.P. as a Potential Alternative?**

# M.A.P. as a Potential Alternative?

- ▶ Due to business uncertainties
- ▶ Possibility to use the M.L.I. in the future, where applicable

States	Average years to conclude M.A.P.s in 2019	Average years to conclude bi- or multilateral APAs in 2018	
		E.U.	NON-E.U.
• France	5,5	2,6	2
• Germany	5,3	4,3	3,8
• Italy	6	4,2	2,8
• Korea	4,7	-	-
• Spain	5,4	1,2	-
• U.K.	4,1	4,6	2,9
• USA	5,8	-	-



## Bilateral Advance Pricing Agreements | What About Italy?

# What About Italy?

- ▶ Possible re-negotiation of existing A.P.A.s
- ▶ Possible introduction of new adjustment clauses in future A.P.A.s
- ▶ Downward adjustments might not be covered by the A.P.A.s



# MCLE Verification Code 1

A



# Korea

**Maria Chang, Bae, Kim & Lee L.L.C.**  
Seoul

## Korea | Financial Stimulus and Relief Measures

# Financial Stimulus and Relief Measures

- ▶ Korean government introduced approximately USD 250 billion
- ▶ Guarantees and loans with low interest rates for SMEs and low-cost carriers
- ▶ Consumption coupons and support for family care leave
- ▶ Lending support to SMEs and micro-sized businesses
- ▶ Employment retention subsidy
- ▶ Subsidy for quarantined employees
- ▶ Subsidy for flexible working arrangements



**Korea | Special Tax Credit for Rent Reductions**

# Special Tax Credit for Rent Reductions

- ▶ Landlords may benefit from corporate tax credit if discount is provided on voluntary basis
- ▶ Tax deduction if 50% of the rental fees are reduced
- ▶ Rate of deduction expected to increase to 70%
- ▶ Tenant must be a micro-sized business
- ▶ January 1, 2020 – June 30, 2021

## Korea | Tax Reductions for SMEs in Disaster Zones

# Tax Reductions for SMEs in Disaster Zones

- ▶ S.M.E.s in special disaster areas affected by COVID-19 eligible for tax reduction for the taxable period including June 30, 2020
- ▶ Small sized enterprises – 60%
- ▶ Medium sized enterprises – 30%
- ▶ Limit: KRW 200 million (approx. USD 200,000)



## **Korean Tax Deduction on Increased Spending**

# Tax Deduction on Increased Spending

- ▶ Temporary increase in tax deductions for individual spending
  - ▶ Credit cards: from 15% to 30%
  - ▶ Debit card/cash: from 30% to 60%
  - ▶ Traditional market, public transportation: from 40% to 80%
- ▶ March 2020 to June 2020

## Korea | Corporate Income Tax/Value Added Tax

# Corporate Income Tax/Value Added Tax

- ▶ Certain affected industries and regions eligible for extension by 3-9 months
- ▶ Payment deadlines extended for up to 9 months
- ▶ Taxpayer must demonstrate that damages incurred as a result of COVID-19
- ▶ Exemption on payment of V.A.T. for simplified V.A.T. taxpayers with annual supply price of USD 30,000 to 48,000



## Korea | Cross-Border Issues

# Cross-Border Issues

- ▶ No specific position on potential permanent establishment issues for stranded workers
- ▶ Transfer pricing issues





# U.K.

**Gary Ashford, Harbottle & Lewis L.L.P.**  
London

## U.K. | U.K. Policies for COVID-19

# U.K. Policies for COVID-19

- ▶ Main Policy
- ▶ Job Retention Scheme (J.R.S.) (“Furlough scheme”)
  - ▶ Announced 20 March 2020 effective from 1 March
  - ▶ Originally for period up to 31 May 2020 but extended
  - ▶ Original rules, employee could not work, covered 80% of employee’s wages (up to £2,500 per month)
  - ▶ Taxable and liable to N.I.C.
  - ▶ From 1 August 2020, N.I.C. and pension contributions not included
  - ▶ From 1 September only covered 70% and employers expected to top up to 80%
  - ▶ From 1 October only covered 60% and employers expected to top up to 80%
  - ▶ From 5 November back up to 80%



## U.K. | U.K. Policies for COVID-19

# U.K. Policies for COVID-19

- ▶ Self Employed Income Support Scheme (S.E.I.S.S.)
  - ▶ Grant of up to £7,500 per quarter linked to average trading profits over 3 years
  - ▶ Second Grant Max £6,570
  - ▶ Third Grant back up to £7,500 Max

## U.K. | U.K. Policies for COVID-19

# U.K. Policies for COVID-19

- ▶ Other Support Measures
- ▶ Bounce Back Loan Scheme (“B.B.L.S.”) (loans of £2,000 up to 25% of turnover up to £50,000)
- ▶ Coronavirus Business Interruption Loan Scheme (“C.B.I.L.S.”) (loans of up to £5m)
- ▶ Future Fund Loans (£125,000 up to £5m)
- ▶ £750 Fund for R&D
- ▶ From January 21
- ▶ One off grants for retail, hospitality and leisure up to £9,000 per property



## U.K. | U.K. Policies for COVID-19

# U.K. Policies for COVID-19

- ▶ Relaxations
- ▶ Individual Residence
- ▶ Corporate Residence
- ▶ Permanent Establishment
  - ▶ But what about British “working” overseas?



## U.K. | U.K. Policies for COVID-19

# U.K. Policies for COVID-19

- ▶ Cost of COVID-19
- ▶ Estimate of over £355b
- ▶ How to address the costs?
  - ▶ Raising Tax Rates
  - ▶ Carbon and Environmental Taxation
  - ▶ Wealth Taxes
  - ▶ Increased Compliance (Including Furlough Fraud)

**U.K. | March 3, 2021, Budget**

# March 3, 2021, Budget

- ▶ Job Retention Scheme and SEISS extended
- ▶ Personal Tax Rates to freeze until 2025/26
- ▶ Corporate Tax to rise from 19% to 25% by 2023, no rise on profits under £50,000, and tapered up to £250,000
- ▶ Lots of incentives including new super deduction of 130%
- ▶ Loss carry back 3 years to March 2022 up to £2m
- ▶ Various Consultations linked to Brexit and withdrawal from State Aid rules
- ▶ Stamp Duty Holiday on real estate continued
- ▶ VAT at 5% continued
- ▶ IHT rates frozen until 2025/26
- ▶ Little mention on CGT, so beware.....

# Benelux Countries

**Werner Heyvaert, AKD Benelux Lawyers(\*)**  
Brussels

(\*) Werner Heyvaert thanks his colleagues Vicky Sheik Mohammad (Brussels), Laura Vissers (The Netherlands) and Joël Butkiewicz-Jung (Luxembourg) for preparing this presentation



## Belgium | General Measures

# General Measures

- ▶ **Federal Premium**: Active independent workers who were forced to shut down their business by government mandate are eligible for €1,291.69 per month if they do not have any dependent family, or €1,614.10 euros per month if they do (estimated cost of the measure ~ €1.5 billion)
- ▶ **Regional Premiums**: Many specific premiums are available in the three Belgian Regions to support businesses that are forced to close their doors or whose activities have fallen sharply as a result of the lockdown measures
- ▶ **Moratorium Decrees**: Temporary protection of businesses against, *inter alia*, bankruptcy petitions and certain debt collection measures
- ▶ **€50 Billion Guaranteed Credit Program**: Secures certain credits and credit lines with a maximum maturity of 12 months granted by lenders to Belgian companies, organizations and self-employed individuals
- ▶ **Temporary Unemployment**: Becomes automatic, is broadened and reinforced. Allows businesses to ask the federal government to pay for a part of their employees' salaries when they have to temporarily lay them off due to dramatic economic circumstances – as in the current crisis (estimated cost of the measure ~ €0.6 billion)

## Belgium | Financial Measures

# Financial Measures

### ▶ Tax Management and Administration

- ▶ Freeze on Tax Audits
- ▶ Filing & Payment of Taxes: Businesses are automatically granted temporary extensions of the deadline to file tax returns and pay Corporate or Personal Income Tax, Wage Withholding Tax and V.A.T. They can also request additional support measures (e.g., payment plans or waiver of fines)
- ▶ Increase of Credit for Tax Prepayments
- ▶ Extension of DAC6 Reporting Deadlines

### ▶ Direct Taxation

- ▶ Loss Carry-Back
- ▶ Reconstruction Reserve
- ▶ Increase of Investment Deduction
- ▶ Deductibility of Debt Write-Downs
- ▶ Full Deductibility of Reception Costs
- ▶ Partial Exemption of Wage Withholding Tax to Increase Equity of Companies
- ▶ Deductibility of Costs for Donations in Kind of Medical Devices and Products

## Belgium | Financial Measures

# Financial Measures

### ▶ Indirect Taxation

- ▶ Accelerated Refund of V.A.T. Credit on V.A.T. Current Account
- ▶ V.A.T. Exemption of Donations of Medical Devices and Computers to Medical Facilities or Specific Institutions
- ▶ Reduced 6% V.A.T. rate for Restaurants, Catering and Cafes
- ▶ Reduced 6% V.A.T. rate for face masks and hydro-alcoholic gels
- ▶ Non-Exhaustive List of Goods Exempt From Import V.A.T.

### ▶ Social Security

- ▶ Extension of Deadlines for Payment of Employer and Self-Employed Social Security Contributions

**Belgium | Challenges for International Business**

# Challenges for International Business

- ▶ **Cross Border Workers:** Belgium concluded mutual agreements with the Netherlands, Germany, France and Luxembourg. Under these agreements, and subject to specific conditions and formalities, days worked from home are assimilated to days worked in the country where the individual would normally have worked.
- ▶ **Creation of a P.E. and Corporate Tax Residence:** Ministry of Finance confirms that O.E.C.D. Secretariat's guidance (April 3, 2020) is followed by Belgium – no official communication has been or will be made. We recommend seeking written confirmation through an Advance Tax Ruling or from the local tax inspector.

**Belgium | Challenges for International Business**

# Challenges for International Business

- ▶ **Expats:** Subject to proper approval, expats are taxed in Belgium only on salary relating to days worked in Belgium. Counting of days worked outside of Belgium is crucial. No special rules for expats who cannot travel (as much as they otherwise would) due to COVID-19 travel restrictions. Exception: if expat is stuck in home-country due to COVID-19 and can corroborate that he is taxed in home country on salary corresponding to time spent in home-country
- ▶ **Creation of a P.E. for construction sites:** Construction site shut down due to COVID-19 measures → days of inactivity count for computation of duration of presence of foreign construction companies in the country

## Links to Our Blogs

- [Coronavirus: Additional Support Measures from the Belgian Ministry of Finance](#) (March 18, 2020).
- [Belgium to Introduce a Loss Carryback Light and a Tax-Exempt Reconstruction Reserve to Help Business Strengthen Their Liquidity and Solvability](#) (June 2, 2020).
- [Tax Relief Measures in Belgium Fighting the Economic Impact of the COVID-19 Corona Crisis](#) (April 8, 2020).
- [Latest Belgian Tax Measures in the “Post”-COVID-19 Era](#) (June 15, 2020).
- [Belgium’s Latest Fiscal Response to the Economic Slump Caused by the COVID-19 Pandemic - A New “Reconstitution Reserve” for Belgian Corporate Taxpayers](#) (December 7, 2020).

## The Netherlands | General Measures

# General Measures

- ▶ **NOW 3.0 (Temporary Emergency Bridging Measure)**: A substantial compensation of wages for companies with turnover loss of at least 20%. Maximum 85% of the wage costs will be compensated. To receive the compensation, additional conditions apply (e.g., employees must be paid in full, no dividend distributions or share purchase programs).
- ▶ **T.V.L. (Reimbursement of Fixed Costs)**: Tax-free reimbursement for turnover loss for companies in selected sectors, with turnover loss of at least 30%. The amount of the reimbursement is based on the total turnover loss and a percentage for fixed costs that is set per sector (max. € 400.000).
- ▶ **Loans and Guarantees Schemes**: Credit guarantee schemes for companies to finance the loss suffered or expected as a result of the COVID-19 crisis. The schemes are (partly) guaranteed by the government. The most important schemes are: the bridging loans for small companies (K.K.C.), BMKB-C, Tozo 2, COL for startups and scale-ups, 'Qredits' and D.T.I.F. for companies that conduct international business.
- ▶ **Compensation for Horticulture and Floriculture**: Compensation for turnover loss suffered by entrepreneurs in the horticultural and floriculture sectors of (maximum) 30% of the loss. An amount of €600 million was available for this compensation (closed).
- ▶ **TOGS (Reimbursement for entrepreneurs in affected sectors)**: A set reimbursement of € 4.000 (tax free) for companies in Affected Sectors COVID-19 (closed).

## The Netherlands | Financial Measures

# Financial Measures

### ▶ Tax Management and Administration

- ▶ Deferral of Tax Payments: For a period of three months for Corporate Income Tax, Payroll Tax, V.A.T., Income Tax and Local Tax (upon request). An extension of this period could be requested. Extended payments will be paid in 36 monthly instalments.
- ▶ Reduced interest for late payment rates: to nearly 0%
- ▶ Reduced corporate interest rates: to 4% (instead of 8%)
- ▶ Lowering provisional assessments
- ▶ Unblocking G-accounts
- ▶ Extension of DAC6 Reporting Deadlines

### ▶ Direct Taxation

- ▶ Corona Impact Provision' in the 2019 C.I.T. return ('Corona Reserve').
- ▶ Extended restructuring filings
- ▶ Postponement of the legislative proposal "Act on excessive borrowing of private companies"



## The Netherlands | Financial Measures

# Financial Measures

### ▶ Indirect Taxation

- ▶ V.A.T. Exemptions for face masks, outsourcing medical workers, the donation of medical facilities
- ▶ V.A.T. exemptions for COVID-19 vaccines and test kits
- ▶ Reduced 6% V.A.T. rate for online gym-classes

### ▶ Social Security

- ▶ The payroll tax administration could be simplified
- ▶ The work-related cost schema is extended
- ▶ Travel allowances for employees working from home
- ▶ B.I.K.: the Job-related Investment Deduction (deduction of investment costs from the wage tax due)

## The Netherlands | Challenges for International Business

# Challenges for International Business

- ▶ **Cross Border Workers:** The Netherlands concluded mutual agreements with Belgium and Germany. Under these agreements, and subject to specific conditions and formalities, days worked from home are assimilated to days worked in the country where the individual would normally have worked.
- ▶ **Creation of a P.E. and Corporate Tax Residence:** Ministry of Finance confirms that O.E.C.D. Secretariat's guidance (published on January 21, 2021) is followed by the Netherlands. We recommend seeking written confirmation through an Advance Tax Ruling or from the local tax inspector.

## Links to Relevant Blogs

[The coronavirus and your company: Dutch government measures to help businesses | Business.gov.nl](#) (this overview will constantly be updated)

[Coronavirus: financial schemes for businesses and self-employed people | Coronavirus COVID-19 | Government.nl](#)

[Coronavirus \(COVID-19\): support and information | RVO.nl](#) (this overview will constantly be updated)

## Luxembourg | General Measures

# General Measures

- ▶ **New non-refundable allowance for the self-employed:** As from January 8, 2021, the amount of the new aid varies depending on the progressive tax rate applicable to the self-employed taxpayer. This aid amount to €3.000, €3.500 or €4.000 depending on the taxpayer's situation.
- ▶ Aids for S.M.E.:
  - ▶ Solutions for urgent need of cash flow;
  - ▶ Facilitation of bank financing; and
  - ▶ Encouraging research and investment to combat COVID-19.
- ▶ **Short-Time Work:** In order to continue supporting companies and their employees impacted by the COVID-19 crisis, special arrangements for short-time working remain in force until 30 June, 2021
- ▶ **Paid Family Leave:** Extraordinary leave for family reasons for working parents who are unable to access additional child-care support. Measure applicable until April 2, 2021
- ▶ **Board Meetings:** By a special Grand Ducal decree dated March 20, 2020, the Luxembourg authorities have formally decided that shareholders meetings and board meetings can be held by video conference or through other means (circular resolutions for board meetings, votes in writing or special proxies for shareholders meeting)

## Luxembourg | Financial Measures

# Financial Measures

### ▶ Tax Management and Administration

- ▶ **Filing & Payment of Taxes:** On December 21, 2020, The Luxembourg Government announced that the deadline for filing personal and corporate income tax returns for the year 2020 is set at the end of June 2021 instead of March 31, 2021
- ▶ Extension of DAC6, C.R.S. and F.A.T.C.A. Reporting Deadlines

### ▶ Indirect Taxation

- ▶ Until May 12, 2020, there was an “administrative tolerance” for late filing of V.A.T. returns. As of this date, no other measures have been implemented in relation with indirect taxes
- ▶ No reduction of V.A.T.

## Luxembourg | Cross Border Workers

# Cross Border Workers

- ▶ **Cross Border Workers**: Since March 2020, Luxembourg concluded mutual agreements with Belgium, Germany, and France. Under these agreements, and subject to specific conditions and formalities, days worked from home located are assimilated to days worked in the country where the individual would normally have worked. These mutual agreements are currently extended to March 31, 2021.
- ▶ **Social Security of Cross Border Workers**: Luxembourg, Belgium, Germany and France have agreed to maintain the exceptional provision disregarding the days worked from home linked to the COVID-19 crisis for the determination of social security legislation applicable to cross-border workers until June 30, 2021.

# MCLE Verification Code 2

**M**



# Sweden

**Carl-Olof Bouveng, Cirio Advokatbyrå AB**

Stockholm

**Peter Utterstrom, Peter Utterstrom Advokat AB**

Stockholm



## Sweden | Generally about COVID-19 in Sweden

# Generally About COVID-19 in Sweden

- ▶ Not yet any lockdown by law affecting stores and business
- ▶ Recommendations of social distance, work from home, etc.
- ▶ Restrictions for sports events, theaters and other cultural events
- ▶ Restrictions of gatherings in excess of eight persons
- ▶ Restrictions on restaurants' opening hours



## Sweden | Relief Programs

# Relief Programs

- ▶ Work time reduction
- ▶ Compensation for loss of revenue
- ▶ Rent reduction
- ▶ Reduced social security fees
- ▶ Subsidized sick compensation
- ▶ State funding and guarantees
- ▶ Postponement of tax payments

## Sweden | Work Time Reduction

# Work Time Reduction

- ▶ In May – June 2021, work time reduction up to 80% will be compensated 50%
- ▶ In December 2020 – April 2021, work time reduction up to 80% compensated 75%
- ▶ In May – July 2020, work time reduction up to 60% was compensated 75%
- ▶ Available to all businesses except “solo entrepreneurs” without employees
- ▶ No distributions to shareholders permitted 2 months before, during and six months after the period covered
- ▶ Regular reporting required

## Sweden | Compensation For Loss of Revenue

# Compensation For Loss of Revenue

- ▶ Available to businesses with a significant loss of revenue.
- ▶ Previously granted for the period March-July 2020
- ▶ Recently also for the period August 2020 - February 2021
- ▶ Requirements include:
  - ▶ Loss of revenue of more than 30 % compared to same period last year (or for the period August – September 2021 40%)
  - ▶ Revenue of at least SEK 250,000 (approx. USD 30,000) prior to May 2020 or January 2020
  - ▶ Not make any distributions to shareholders during April 2020 - October 2021
  - ▶ Not be insolvent
- ▶ Amount of compensation: A share of fixed costs equal to 70 – 90 % depending on size of business etc
- ▶ Must not have been insolvent December 31, 2019 or at the time of application

## Sweden | Rent Reduction

# Rent Reduction

- ▶ Available to landlords having agreed a rent reduction for tenants in certain business sectors (i.e. retail, hotel and restaurants)
- ▶ Period covered: January – March 2021 (previously April-June 2020)
- ▶ Amount of compensation: 50% of the agreed rent reduction (previously a cap of 25% of the original rent)

## Sweden | Reduced Social Security Fees

# Reduced Social Security Fees

### **GENERALLY**

- ▶ Available to all businesses and not-for-profit organizations and for up to 30 employees and up to a salary of SEK 25,000 (USD 3,000)/month. Also applicable to self-employed
- ▶ Period covered: March – June 2020 and all year 2020 for self-employed

### **REDUCED SOCIAL SECURITY FEES FOR YOUNG EMPLOYEES**

- ▶ Available to business with employees of age below 23 years old
- ▶ Fees reduced from 31.42% to 19.73%
- ▶ Period covered: January 2021 – March 2023

### **EMPLOYERS COMPENSATED FOR COSTS FOR SICK LEAVE**

- ▶ Employer compensated for salary paid during the initial period of sick leave
- ▶ No doctor's certificate required for first two/three weeks of sickness

**Sweden | Tax Issues**

# Tax Issues

- ▶ O.E.C.D. Transfer pricing – adjustments for corona-effect/impact accepted by S.T.A.
- ▶ Border workers – Sweden/Denmark/Norway/Finland – old rules still in place and no special adaption for the circumstances
- ▶ Extended stays by individual employees – 183 day/one year rule in place, no special rules in place
- ▶ P.E. concerns – foreign employee in quarantine in Sweden, no special rules in place, may trigger Swedish P.E. for foreign employer
- ▶ Assignments to/short work in Sweden – new rules in effect from Jan 1, 2021



# Brazil

**Vinicius Jucá Alves, Tozzini Freire Advogados**  
São Paulo



## Brazil |

On March 26th of 2020 the Minister of Economy in connection with federal government announced a stimulus package to help Brazilian companies to face the economic impacts of COVID-19 pandemic in Brazil.

**EXTENSION OF THE DEADLINE TO PAY  
TAXES AND PRESENT TAX RETURNS**

**RENEGOCIATION OF DEBTS**

**INCOME TAX RETURN DEADLINE  
EXTENSION**

**IMPORT DUTY EXEMPTION ITEMS  
FOR MEDICAL AND HOSPITAL  
USAGE**

**EXTENSION OF THE EXPIRATION  
DATE FOR TAX CLEARANCE  
CERTIFICATES**

**Brazil |****Extension of the deadline to pay taxes**

- Federal taxes on revenues (PIS/COFINS): postponed for 4 months the due date taxes payable in March and April/2020 (Ordinance No. 139/2020)
- Payroll taxes: postponed for 5 months the due date of taxes payable in triggered on March and April, 2020 to August and October/2020, respectively (MP No. 927/2020).
- Tax applicable to small and mid-sized businesses (“Simple” tax) – postponed for 6 months the tax payable from March to May/2020.

**Extension of the deadline to present tax returns**

- Extension of the deadline for entities to present tax returns for the Federal tax authorities.
- Tax Clearance Certificates that would expire by March 23rd, 2020, were extended for an additional 90 days. (Joint Ordinance RFB/PGFN No. 555/2020)
- Postponed for 3 months the due date of federal tax installment payments due in May, June and July.
- Extended the deadline of the Individual Income Tax Returns for 2 months (from April to June 30, 2020).

**Brazil |****Tax Reductions**

- Exempted the Tax on Credit Operations ("IOF-Credit") for credit transactions contracted between April 3 and June 3, 2020. In addition, the Decree exempted the surplus IOF-Credit tax on credit operations for the same period.
- Temporary reduction in the import duty rate for alcohol, sanitizers, protective clothing and accessories, and some pharma products. (Resolution CAMEX No. 17/2020).
- Temporarily reduces to zero the IPI rates on ethyl alcohol, disinfectant, antiseptic gel, protective clothing and accessories, electro diagnostic devices, oxygen therapy devices and others. (Decree No. 10.285/2020).

**Settlement of federal tax debts not paid on the deadline**

- Possibility of settlement of Federal Tax Debts with the National Treasury Attorney General. Tax debts subject to litigation.
- Settlement available in 2020 (Ordinance n. 14.402/2020). Necessary to prove reduction of reduction of revenues last year. Discounts of up to 100% in interest and up to 70% in fines. Possibility of paying the tax debts in installments and other possibilities of settlement.
- Settlement available in 2021 for federal tax debts that were not paid during the COVID-19 crisis, from March to December/2020 (Ordinance n.1.696/21). Same conditions / benefits described above.

Brazil |

**MP 936** Emergency Program for the Maintenance of Employment and Employees' Income TOZZINI FREIRE

Alternatives	How to implement	Monthly remuneration	Option	Emergency Benefit paid by the Government
Reduction of salary and working hours: Up to 90 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Up to BRL 3,135 and above BRL 12,202.12 with a university degree	Salary/working hours reduction of 25%, 50% or 70%	25%, 50% or 70% of the unemployment insurance amount
		Between BRL 3,135 and BRL 12,202.12, or higher monthly salary without a university degree	Salary/working hours reduction of 25%	25% of the unemployment insurance amount
	Collective negotiation (collective bargaining agreement negotiated with the union)	All employees regardless their monthly salaries	Any salary/working hours reduction different than the ones above	(i) Reduction of less than 25%: there is no right to the Benefit; (ii) Reduction between 25% and 49%: 25% of the unemployment insurance amount (iii) Reduction between 50% and 69%: 50% of the unemployment insurance amount (iv) Reduction above 70%: 70% of the unemployment insurance amount
Temporary suspension of employment agreements: Up to 60 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Up to BRL 3,135 and above BRL 12,202.12 with a university degree	(i) companies with revenue of up to BRL 4,8 million over the past year (2019): 100% of the unemployment insurance amount  (ii) other companies: 70% of the unemployment insurance amount. In this situation, the company must also pay to the employee a monthly allowance equal to 30% of the employee's salary	
	Collective negotiation (collective bargaining agreement negotiated with the union)	Different salary ranges than the one above		

**Notes:**

- Current maximum amount of the unemployment insurance: BRL 1,813.03.
- Companies must inform the Ministry of Economy and the employees' union in within 10 days counted as of the execution of the agreements.
- The monthly allowance does not have salary nature (i.e., it is not subject to labor and social security charges). The monthly allowance may be granted by the employer in all alternatives above, but it is only mandatory in the situation informed in the chart above.
- Employees' job stability: during the period of the salary reduction or temporary suspension of employment agreement and an equal period thereafter.
- Termination without cause may be performed during the employees' job stability period, however, it will result in the payment of the mandatory severance + an additional indemnification established in the MP 936.
- It is possible to adopt both alternatives (reduction of salary + temporary suspension of employment agreement) for the same employee if the limit of 90 days is observed.



# U.S.A. and States

**James R. Shorter, Jr.** Shorter Law Offices  
New York

**U.S.A. and States | U.S. State Taxation of Employment Income**

# U.S. State Taxation of Employment Income

- ▶ States tax employment income of their residents without regard to where services are performed
- ▶ Where nonresident employees work in a State, that State may impose tax to the extent services are performed in the State
  - ▶ The income is sourced to the nonresident State based on the ratio of the working days employed within the State compared to the total number of working days employed both within and without the State
  - ▶ The residence State may tax income but typically (although not universally) allows a nonrefundable credit for tax imposed by nonresident State
- ▶ During the pandemic many employees began working remotely and may do so after the pandemic is over, and this adversely affects the revenue stream of the nonresidence state

## U.S.A. and States | New Hampshire v. Massachusetts

# New Hampshire v. Massachusetts

- ▶ Many residents of New Hampshire work in Massachusetts
  - ▶ Massachusetts does not wish to relinquish its tax jurisdiction merely because the New Hampshire workers are not working in Massachusetts
  - ▶ income tax equivalent to online shopping and *Wayfair* Case
- ▶ Massachusetts adopts COVID-19 State of Emergency
  - ▶ All compensation received for personal services performed by a nonresident will be taxed in Massachusetts even if the work is performed remotely where:
    - ▶ The nonresident was employed and performed services in Massachusetts prior to COVID-19 and
    - ▶ During such emergency performs services from a location outside Massachusetts due solely to Covid-19 State of Emergency

## U.S.A. and States | **New Hampshire v. Massachusetts**

# New Hampshire v. Massachusetts

- ▶ New Hampshire filed a Bill of Complaint on October 19, 2020, in the U.S. Supreme Court, which has original and exclusive jurisdiction
  - ▶ Generally, a State must seek permission to sue under the original jurisdiction of the Supreme Court and must show the lack of an alternative forum to address its case
- ▶ An amicus brief was filed by New Jersey, Connecticut, Hawaii and Iowa in support of New Hampshire
- ▶ A second amicus brief was filed by Ohio, Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, Texas, and Utah in support of the Supreme Court's jurisdiction, arguing the Supreme Court has mandatory jurisdiction
- ▶ Four other amicus briefs filed by various private parties in support of New Hampshire



**U.S.A. and States | New Hampshire v. Massachusetts**

# New Hampshire v. Massachusetts

(Commerce Clause Argument)

- ▶ Position of New Hampshire is based on Commerce Clause and Due Process Clause of U.S. Constitution
- ▶ Under the Commerce Clause
  - ▶ A tax on nonresidents must meet 4 requirements:
    - ▶ The activity must have a substantial nexus with the taxing State
    - ▶ The tax must be fairly apportioned
    - ▶ The tax must not discriminate against interstate commerce
    - ▶ The tax must be fairly related to the services provided by the taxing State

**U.S.A. and States | New Hampshire v. Massachusetts**

# New Hampshire v. Massachusetts (Due Process Clause Argument)

- ▶ Under the Due Process Clause
  - ▶ A minimum connection or link must exist between a State and the person, property, or transaction it seeks to tax
  - ▶ In the case of a tax on an activity, there must be a connection between the State and the activity itself rather than a connection only to the actor
  - ▶ The income attributed to the State must be rationally related to values connected with the taxing State.
- ▶ If the connection is remote, the State tax will violate the Due Process Clause

**U.S.A. and States | Amicus' comment regarding the Commerce and Due Process Clause Arguments**

# Amicus' comment regarding the Commerce and Due Process Clause Arguments

- ▶ Arguments submitted by Professor Zelinsky
  - ▶ It is a bedrock principle of Federalism that a State cannot tax a nonresident on income the nonresident earns outside that State
  - ▶ If a State could grab income generated by nonresidents outside the State's borders, every State would seek a free lunch served by a sister state's residents

**U.S.A. and States | New York’s “Convenience of the Employer” Rule**

# New York’s “Convenience of the Employer” Rule

- ▶ A nonresident with a permanent place of employment in N.Y.S. who performs services from home located outside N.Y.S. is deemed to be working at the employer’s N.Y.S. location
  - ▶ Remote workdays during the pandemic are subject to the rule.
- ▶ An exception is provided for a *bona fide* employer office at the employee’s home where:
  - ▶ The primary factor exists or
  - ▶ 4 secondary factors and 3 other factors exist

**U.S.A. and States | New York’s “Convenience of the Employer” Rule**

# New York’s “Convenience of the Employer” Rule

- ▶ Primary Factor - The home office contains or is near specialized facilities.
- ▶ Secondary Factors
  - ▶ The home office is a requirement or condition of employment
  - ▶ The employer has a bona fide business purpose for the employee’s home office location
  - ▶ The employee performs some of the core duties at the home office
  - ▶ The employee deals with clients, patients or customers on a regular and continuous basis at the home office
  - ▶ The employer does not otherwise provide the employee with designated office space
  - ▶ Employee is reimbursed for expenses for the home office

## U.S.A. and States | New York's "Convenience of the Employer" Rule

# New York's "Convenience of the Employer" Rule

### ▶ Other Factors

- ▶ The employer maintains a separate business telephone line and listing for the home office
- ▶ The employee's home office address + telephone number are listed on employer's letterhead
- ▶ The employee uses a specific area of the home exclusively to conduct business
- ▶ The employer's business is selling products at wholesale or retail and the employee keeps an inventory or samples
- ▶ Business records of the employer are stored at the employee's home office
- ▶ The home office location has a sign indicating it is an employer's place of business
- ▶ Advertising for the employer shows the employee's home as a place of business
- ▶ The home office is covered by a business insurance policy
- ▶ The employee is entitled to and actually claims a tax deduction for home office expenses
- ▶ The employee is not an officer of the company



# Speaker Contact Points

Name	Firm	Location	Phone	Email
Galia Antebi	Ruchelman P.L.L.C.	New York	+1 (212) 755-3333	<a href="mailto:antebi@ruchelaw.com">antebi@ruchelaw.com</a>
Gary Ashford	Harbottle & Lewis L.L.P	London	+44 (20) 7667 5000	<a href="mailto:Gary.Ashford@harbottle.com">Gary.Ashford@harbottle.com</a>
Vinicius Jucá Alves	Tozzini Freire Advogados	São Paulo	+55 (11) 5086 5440	<a href="mailto:vjuca@tozzinifreire.com.br">vjuca@tozzinifreire.com.br</a>
Carl-Olof Bouveng	Cirio Advokatbyrå AB	Stockholm	+46 (76) 617 08 90	<a href="mailto:carl-olof.bouveng@cirio.se">carl-olof.bouveng@cirio.se</a>
Maria Chang	Bae, Kim & Lee L.L.C.	Seoul	+82 (2) 3404 7589	<a href="mailto:maria.chang@BKL.co.kr">maria.chang@BKL.co.kr</a>
Petra Eckl	GSK Stockmann	Frankfurt	+49 69 710003-0	<a href="mailto:petra.eckl@gsk.de">petra.eckl@gsk.de</a>
Werner Heyvaert	AKD	Brussels	+32 (2) 629 42 88	<a href="mailto:WHeyvaert@akd.E.U.">WHeyvaert@akd.E.U.</a>
Stanley C. Ruchelman	Ruchelman P.L.L.C	New York	+1 (212) 755-3333	<a href="mailto:ruchelman@ruchelaw.com">ruchelman@ruchelaw.com</a>
James R. Shorter , Jr.	Shorter Law Offices	New York	+1 (646) 616-3986	<a href="mailto:jshorter@shorterlaw.net">jshorter@shorterlaw.net</a>
Peter Utterstrom	Peter Utterstrom Advokat AB	Stockholm	+46 (725) 862 224	<a href="mailto:peter@utterstrom.legal">peter@utterstrom.legal</a>
Marco Valdonio	Maisto e Associati	Milan	+39 (02) 776931	<a href="mailto:m.valdonio@maisto.it">m.valdonio@maisto.it</a>



# Important Notice

This presentation is not intended to be legal advice. Reading these materials does not create an attorney-client relationship. The outcome of each case stands on its own merits.





NEW YORK STATE  
BAR ASSOCIATION

**Thank you for your participation in  
today's program.  
Please submit your MCLE  
verification form!**