

COVID-19 Response: France

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Finance / Loan Schemes

Guarantees (up to €300 billion) provided by the French State for one-year liquidity loans (as per government order dated 13 July 2020):

- ▶ **For companies created on or after 1 January 2019**, the loan amount which may benefit from the guarantee is capped at the estimated amount of total employee gross remuneration in France over the first 2 years of activity (or, if this is more favorable to them: 25% of their 2019 turnover)
- ▶ **For companies created prior to 1 January 2019**, the loan amount which may benefit from the guarantee is capped at 25% of the 2019 turnover, except in 2 cases:
 - innovative companies: the cap is set at up to 2 times the amount of total employee gross remuneration paid in France in 2019, if higher;
 - companies in the tourism industry: the cap is set at the amount of their turnover during their best three months of 2019. This ceiling must be less than 12 months of the company's estimated cash-flow needs if, during the last financial year, it employed more than 250 people or if it had both turnover exceeding €50 million and total assets exceeding €43 million. Otherwise, this ceiling must be less than 18 months of its estimated cash-flow needs
- ▶ The portion of the loan amount covered by the guarantee depends on the size of the borrower:
 - 90% for companies with fewer than 5000 employees in France and turnover below €1.5 billion;
 - 80% for companies with a turnover between €1.5 billion and €5 billion;
 - 70% for other companies

(continued on following page)

All French enterprises (whether or not incorporated) other than :

- ▶ financial institutions (*établissements de credit or sociétés de financement*) ;
- ▶ real estate companies (*sociétés civiles immobilières*) except those which carry out an activity of construction-sale or mainly own historical monuments ; and
- ▶ those "in difficulty" within the meaning of EU law as at 31 December 2019 (the latter being excluded by the EU State Aid Temporary Framework) ;
- ▶ Eligible loans are those granted by financial institutions (*établissements de credit and sociétés de financement*) between 16 March 2020 and 30 June 2021, which are not otherwise guaranteed or secured (save for loans to large companies which can only benefit from the 70% or 80% state guarantee, for which other securities or guarantees may be requested) and which have the following characteristics:
 - an amortization deferral of at least 12 months, i.e., no repayment required the first year;
 - a provision giving borrowers the possibility, at the end of the first year, to extend the amortization period by one, two, three, four or five years (noting that the government has asked the French banking federation to review the possibility of deferring the repayment of these loans for a further year for companies that need it);
 - the term of the loan may not exceed six years;
 - the lender will need to be able to demonstrate, if the guarantee is called, that post-grant of the guaranteed loan, total amounts lent by that lender to the borrower were higher than those existing prior to 16 March 2020 (save for ordinary repayments resulting from amortization schedule agreed prior to 16 March 2010 or voluntary repayments by the borrower)
 - there is no requirement as to price of loan in the law or the decree, but banks have been encouraged to lend "at cost" and the *federation bancaire française* has agreed to do so (although this is not binding on banks)

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16 March

(guaranteed loans effectively available as from 25 March)

Now available until 30 June 2021 (vs. 31 December 2020 initially)

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Finance / Loan Schemes

- ▶ The remuneration of the guarantee (to the benefit of the State) varies depending on the size of the borrower and the maturity of the loan. For borrowers above certain thresholds (more than 250 employees or turnover above €50 million or total assets on balance sheet above €43 million), the premium is 50bps for the first year and, if the borrower extends, 100bps for each of the first and second annual extensions, 200 bps for each additional extension after that. The premium is divided by two for smaller borrowers. The first portion of the premium (the initial 50 bps or 25 bps) is payable when the guarantee is granted (although the lender will need to advance this payment and will only recover from the borrower after 12 months) and the additional portion is due if and when the borrower exercises the possibility to extend the maturity of the loan
 - ▶ The guarantee does not apply in case of default during the first two months following drawdown of the loan, or if it turns out that the criteria were not met at the date of the drawdown of the loan
 - ▶ The guarantee covers the loss realised by the lender after exercise by the latter of all in and out of court remedies available after a default. A decree of 17 April has specified that in case of a credit event or payment default, the lender may obtain, within 90 days of making the request, a provisional payment under the guarantee corresponding to its estimated loss (and proportional to the guaranteed percentage). Once the indemnifiable loss has been finally determined, the lender is entitled to an additional payment if the loss is higher or must repay if the loss is smaller
 - ▶ The guarantee passes in case of transfer of the loan only if transfer is made to an affiliate of the lender. Otherwise, the assignment, directly or indirectly, by the lender of all or part of the loan to the benefit of any third party will result in the loss of the benefit of the guarantee in proportion to the amount of the assigned loan. This forfeiture takes effect as of the date of assignment
- ▶ Guarantee is automatic for companies with fewer than 5000 employees and turnover below €1.5 billion in France – this first however requires a bank willing to advance the loan (and we are aware of practical difficulties faced by certain companies, which had encountered financial difficulties in the past); government order required for companies exceeding either of these thresholds
 - ▶ **Large companies who pay out dividends or buy back shares between 27 March 2020 and 31 December 2020 or which have their head office or subsidiaries in non-cooperative jurisdictions cannot benefit from the State guarantee.** Large companies are defined as independent companies or groups which, in their last financial year, had at least 5000 employees or consolidated turnover above €1.5 billion in France. Groups for this purpose are defined by reference to the definition of groups for the purpose of French tax consolidation and would thus only include French entities. Intra-group dividend distributions intended to provide financial support to a French company (in particular to allow it to service its debt) remain permitted even for large companies
 - ▶ There is no restriction in the law or the decree as to use of funds by a French company with foreign subsidiaries. In the Q&A released by the French Government on state-guaranteed loans, the government has however mentioned that it was expected that funds would be used to preserve activity and employment in France and that intended use could be reviewed in the context of loans to large companies for which the grant of the state guarantee requires express approval from the government
- 16 March
(guaranteed loans effectively available as from 25 March)

Loans made through crowdfunding platforms eligible to the state guarantee since the second rectifying Finance Act of 25 April

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GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Finance / Loan Schemes		
Direct loans from the State <ul style="list-style-type: none">▶ Companies that justify their inability to finance themselves in the private sector can be granted loans directly by the State	▶ All businesses, regardless of size and field of activity, provided they demonstrate their inability to get private financing	Current – available until 30 June 2021
Bank loan payment holiday <p>The Fédération Bancaire Française, the professional organization of banks in France, has also announced that banks would allow to defer, without any penalty, credit repayments by up to six months. The French public investment bank (Bpifrance) has also announced that it could provide guarantees for medium-term loans or overdraft facilities granted to companies with less than 5000 employees or even direct loans to these companies</p>		March

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Tax

Deferral of direct taxes

- ▶ Possibility to postpone for up to three months without any penalty direct taxes due in March and April (in particular, corporate income tax instalment and salary tax due in March). May filing deadlines (for corporate income tax and business tax (CVAE)) were postponed to 30 June and enterprises could ask for a deferral of direct taxes due in May. The May payment deadlines applicable to the balance of 2019 corporate income tax due by companies closing their fiscal year on 31 December 2019 and to the balance of 2019 CVAE were automatically postponed to 30 June. A larger flexibility is given to taxpayers to compute their corporate income tax and CVAE instalments subject, for large companies, to not paying out dividends (see next column)
- ▶ Salary tax due in May, June and July were postponed to September, October and November respectively
- ▶ Possibility to suspend monthly prepayments of local taxes (CFE and property tax) which would then be payable at the same time as the balance. For companies in the hotel, restaurant, tourism, event, sports, culture and air transport sectors, payment of the 15 June CFE instalment was automatically postponed to 15 December 2020. For those concerned by an interruption or restriction of their activity as a result of a closure measure in curfew areas, or facing difficulties financial issues related to the health crisis can postpone by three months payment of their property tax normally due in November
- ▶ Deferral of payments and even waivers of taxes can be granted by the tax authorities on a case by case basis
- ▶ Repayment of refundable tax credits can be accelerated
- ▶ Complementary measures may be put in place at a later stage for direct taxes falling due in December in the curfew areas, depending on the evolution of the situation

All companies liable to pay the relevant taxes

- ▶ No specific requirement to be met although the French government is asking companies who are able to pay not to postpone
- ▶ Deferrals do not apply to VAT or income tax withheld at source

Large companies who pay out dividends or buy back shares between 27 March 2020 and 31 December 2020 cannot benefit from these deferrals

Large companies are defined as independent companies or groups which, in their last financial year, had at least 5000 employees or consolidated turnover above €1.5 billion in France. Groups for this purpose are defined by reference to the definition of groups for the purpose of French tax consolidation and would thus only include French entities. Intra-group dividend distributions intended to provide financial support to a French company (in particular to allow it to service its debt) remain permitted, even for large companies. The benefit of the deferral will also be denied to companies which have their head office or subsidiaries in non-cooperative jurisdictions (current list includes: Anguilla, Bahamas, Fiji, Guam, Virgin Islands, Oman, Panama, Samoa, Seychelles, Trinidad and Tobago, Vanuatu)

From
13 March

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GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Employment

Assumption by the French State of the cost of temporary unemployment

- ▶ Companies are compensated by the State for indemnities they have to pay to employees requested to go on temporary unemployment due to a reduction of their working time or to the temporary closure of their enterprise as a result of COVID-19
- ▶ Minimum indemnities payable by employers to employees requested to go on temporary unemployment are equal to 70% of gross income (with a minimum equal to the minimum wage)
- ▶ During the period from 1 June to 31 October 2020, the State compensates the employers up to 60% of the employee's gross hourly pay (compared to 70% between 1 March and 1 June). In sectors particularly affected by the Covid crisis (tourism, culture, etc.) the amount of the allowance has been kept at 70% of the employee's gross hourly pay (with a cap at 4.5 times the minimum wage). Government has indicated that the 70% rate should be maintained for these sectors until 31 December 2020 and a decree is expected to confirm this
- ▶ Requirements are softened compared to normal circumstances:
 - Employers have 30 days from the date they ask their employees to go on temporary unemployment to make an online request to be authorized to implement this measure (as opposed to a prior request under normal circumstances). The relevant administrative authority (« Direccte ») must respond in the next 15 days (compared to 48 hours during the period from 1 March 2010 to 30 September 2020). If the request is not denied within this period, it is deemed accepted
 - Consultation of employee representatives may take place after the request has been made and within the next two months
- ▶ If the reduction in activity is durable, companies can now benefit from a long-term activity reduction plan allowing them to receive compensation of up to 60% of gross employees' remuneration for up to 24 months

All companies requesting employees in France go on temporary leave, provided they can justify having recourse to this measure, e.g.:

- ▶ required to cease to operate by administrative order; or
- ▶ facing a drop in their activity or difficulties in terms of staff resources or supplies; or
- ▶ unable to implement the necessary measures to ensure health and safety of all their employees (work from home, hygiene measures and recommended precautions etc.)

Motivation of the request is important and employers must be cautious not to request compensation from the State for time during which work was carried out by employees. Controls have been launched to ensure employers do not abuse

In a public statement on 27 March, the Ministry of Finances has asked companies having recourse to temporary unemployment to « show moderation » in the payment of dividends. Nothing more formal has been issued to date in relation to dividend restrictions for companies making use of temporary unemployment (unlike for other measures – see below)

Applicable from 1 March 2020

The compensation granted by the State has progressively been reduced since 1 June 2020 (except for companies in the sector of tourism and those affected by the curfew-related measures)

Long-term activity reduction plan introduced on 28 July 2020

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Employment

Deferral, exemptions or waivers of social security contributions

- ▶ All companies were able to postpone all or part of employer and employee social security contributions due in March, April and May 2020 for up to three months without any penalty. The deferral was automatically granted to companies with fewer than 5000 employees and subject to the prior approval of the social security authorities for larger ones, with priority given to those which do not benefit from state-guaranteed loans
- ▶ Employers experiencing an interruption or restriction of their activity due to a closure measures in curfew areas, and those outside curfew areas that continue to be affected by closure measures can benefit from an automatic deferral of social security contributions due in November 2020
- ▶ The Government has announced further deferrals available upon request to employers experiencing an interruption or restriction of their activity due to closure measures in curfew areas or if justified by their financial situation
- ▶ Partial exemptions or waivers are available to companies with fewer than 250 employees operating in certain sectors (hotels, restaurants, tourism, events, sports, culture, air transport)
- ▶ Additional measures are announced for employers having been subject to new restrictions since 26 September 2020 and all companies having had to close as a result of administrative measures should be entitled to a total exemption of employer social security charges. As regards employee social security charges, these should be covered by subsidies granted by the State. These measures should be included in the draft budget for the social security which is currently being examined by parliament

All companies liable to pay the relevant contributions are eligible to the deferral and these companies can also request that payment be spread over time

Only companies with fewer than 250 employees have been eligible to waivers or partial exemptions so far although additional relief measures are expected

Large companies who pay out dividends or buy back shares between 27 March 2020 and 31 December 2020 cannot benefit from these measures. Large companies are defined as independent companies or groups which, in their last financial year, had at least 5000 employees or consolidated turnover above €1.5 billion in France. Groups for this purpose are defined by reference to the definition of groups for the purpose of French tax consolidation and would thus only include French entities. Intra-group dividend distributions intended to provide financial support to a French company (in particular to allow it to service its debt) remain permitted, even for large companies. The benefit of the deferral will also be denied to companies which have their head office or subsidiaries in non-cooperative jurisdictions (current list includes: Anguilla, Bahamas, Fiji, Guam, Virgin Islands, Oman, Panama, Samoa, Seychelles, Trinidad and Tobago, Vanuatu)

From
13 March

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Grants

Up to €1,500 immediate cash grant from solidarity fund financed by the French State and Regions

An additional amount (€2,000, €3,000 or €5,000 depending on turnover) can be provided to eligible enterprises which (i) have at least one employee as at 1 March 2020, (ii) have more debts and fixed expenses than assets available, and (iii) have been denied a cash advance by their bank

For those who can justify a loss of turnover of more than 70%, the aid could be up to €10,000 up to a limit of 60% of turnover, except for companies in certain sectors (hotels, restaurants, events, sports...) where the 60% of turnover limit does not apply and where loss of turnover must be of more than 50%

In order to support businesses that are administratively closed, the Government also provides, from the end of October, for the payment of monthly aid pro rata temporis for the duration of the closure equal to the monthly turnover for the previous year, up to a maximum of €10,000 per month

Enterprises in France with annual turnover below €1 million (€2 million in certain sectors), 10 employees (50 in certain sectors and in curfew areas), and income less than €60,000 (or without any income threshold condition for businesses in certain sectors) which have had to close as a result of administrative measures or undergoing a 50% drop in turnover in March, April, May, June or July 2020 compared to the same month in 2019 (or compared to the 2019 average turnover). Eligible enterprises must also have been up to date with tax and social security payment obligations as at 31 December 2019. Undertakings in difficulty (within the meaning of EU Regulation 651/2014) are also eligible, as long as they were not under judicial liquidation as at 1 March 2020

31 March

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WHEN?

Other

Possibility to defer payment of rents without penalty

Beneficiaries of the solidarity fund may not incur financial penalties or interest for late payment, damages, penalty payments, the enforcement of termination provisions, penalty clauses or any clause providing for forfeiture, due to non-payment of rent or rental charges relating to their business and commercial premises, notwithstanding any contractual terms and the provisions of Articles L. 622-14 and L. 641-12 of the French Commercial Code

This relates to rent and rental charges for which payment is due between March 12, 2020 and the expiration of a period of two months after the end of the state of emergency (which ended July 10, 2020). These measures should be extended following the re-establishment of the state of emergency declared as of 16 October 2020, provided that the Government obtains Parliament's agreement to extend the business support measures taken as part of the first wave of the epidemic

Corporate landlords are entitled to treat rent waivers as tax deductible expenses and tenants can fully offset carry forward tax losses against taxable income resulting from such waivers

Enterprises eligible to the solidarity fund (see below) and those under insolvency proceedings (safeguard, judicial reorganization or liquidation) which continue their activity

12 March

It has been announced that an agreement had been reached between professional organizations of landlords and the ministry of finance to defer rents from 1 April 2020 for even larger companies until activity resumes and to cancel 3 months of rents for small businesses having been requested to close as a result of COVID-19. To be reviewed on a case-by-case basis

Tax treatment of rent waivers applicable to all waivers made between 15 April and 31 December 2020 (save if landlord and tenant are affiliated, in which case tenant must evidence financial difficulty)

Note:

- ▶ This document only summarizes key measures implemented to benefit businesses operating in France.
- ▶ The measures described above are those in place as of **26 October 2020**. Additional details on recently announced measures and additional measures, in particular in certain sectors severely affected by recent administrative measures, are expected (dealing also with rent payments, cost of paid leave and insurance coverage which are areas of concern for businesses)