



## Special Series on Tax Law Design Issues to Respond to COVID-19

This note was produced by the Legal Department to help members address the COVID emergency. The views expressed in this note are those of IMF staff and do not necessarily represent the views of the IMF, its Executive Board, or IMF management.

# Tax Law Design Considerations When Implementing Responses to the COVID-19 Crisis

This note<sup>1</sup> focuses on the tax law design considerations that should be taken into account when implementing the temporary measures to be adopted in response to the COVID-19 outbreak,<sup>2</sup> specifically:

- The **legal implementation of temporary measures**—such as the extent to which legislative action is required—including their phase-out once the crisis period has passed, noting the enhanced effectiveness of **using secondary instruments (e.g. regulations) or administrative actions (e.g. guidance)** rather than amending existing tax laws;
- Other technical legal implementation issues beyond **extending payment and/or filing deadlines** on which much of the focus has been so far, such as **suspending other deadlines** (for instance, for submitting objections and appeals) and **temporarily suspending administrative and judicial enforcement action** to avoid hardship, while preserving the ability to recommence such action at a later date, all being legal areas which have not received much focus so far.

## TAX LAW DESIGN PRINCIPLES FOR IMPLEMENTING TEMPORARY MEASURES

Given the temporary nature of the measures, the following tax law design principles should be followed, wherever possible and whenever compatible with existing legal frameworks:

- **Use secondary instruments (e.g. regulations) or administrative actions (e.g. guidance)** to implement measures, which are more efficient (in terms of being more rapid and easily reversible) than implementing amendments to existing laws or passing new laws. However, to the extent that measures aim to reduce substantive tax liabilities or are incompatible with underlying legislation—for instance, more generous loss carry forward and/or carry back provisions—legislation is likely to be required (with emergency omnibus

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<sup>2</sup> See *Tax Measures in Response to the COVID-19 Outbreak*, and *Tax and Customs Administration Responses to the COVID-19 Crisis* (IMF FAD, March 2020).

legislation possible whenever amendments to multiple existing laws are required).

- **Recommended temporary relief measures** beyond extending payment and/or filing deadlines (without interest or penalties) include **suspension of tax procedures, judicial processes, and extension of related judicial deadlines**, and **suspension of eligible tax audits and enforcement actions**.
- **Refrain from introducing bespoke or knee-jerk fundamental reforms or overhauling existing tax law systems** during crisis, so as not to compromise the integrity of the system, and risk undermining tax certainty after the current crisis abates. In this respect, a premium should be placed on measures that move the tax system in desirable directions. Specifically: **refrain from tax holidays; keep environmental taxes; do not cut corporate income tax rates**.
- Where possible, **design measures to apply automatically**, subject to taxpayers fulfilling relevant conditions; and all should be **made effective temporarily over the crisis period** (e.g. with possible use of phase out or sunset provisions).

## SELECTED TECHNICAL EXAMPLES

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- **Suspension of judicial deadlines, hearings, appeals, mentions, execution proceedings etc.** with some possible exceptions (e.g. for criminal matters; protection of fundamental rights). This should also include extending deadlines for filing briefs in the context of pending proceedings, and suspension of most collection and enforcement actions for adversely affected taxpayers (tax audits or executing on liens, for instance), with redirection of such actions toward critical and emerging risks, and firms profiting from the crisis (IMF FAD, March 2020).
- **Suspension of most scheduled face-to-face court proceedings** for prescribed periods, with some exceptions for urgent cases subject to appropriate protocols.
- **Providing guidance in relation to the suite of temporary measures**, available under existing carve-outs, discretions, or otherwise confirming or declaring them compatible with existing legal constraints (e.g. EU State Aid, applicable up until December 31, 2020).<sup>3</sup> All legal policy action should be designed to enable more flexibility to provide targeted support (e.g. tax deferral; suspension of social security contributions; extension of financing, grants, advance payments), either universally or in specific regions or sectors that are hardest hit by the outbreak, without contravening applicable legal principles (e.g. non-discrimination or selective advantage principles).
- **Providing guidance in relation to the tax treatment of affected taxpayers**, with particular regard again to existing carve-outs, discretions, and, importantly, available interpretations. Certainty of tax treatment will also be critical for affected taxpayers to ensure their tax treatment or profile such as tax residency status does not change solely as a result of the COVID-19 outbreak (e.g. treatment of frontier workers within and between jurisdictions,<sup>4</sup> or where enforcement of lock-downs would otherwise affect a taxpayer's residency or disrupt the way management of a firm is ordinarily exercised).

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<sup>3</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/sa\\_covid19\\_temporary-framework.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf)

<sup>4</sup> [https://minefi.hosting.augure.com/Augure\\_Minefi/r/ContenuEnLigne/Download?id=8516AF19-75EF-465F-BE7C-C6E1BA183CD5&filename=2081-993%20-%20CP%20Fiscalit%C3%A9%20frontaliers%20cov-19.pdf](https://minefi.hosting.augure.com/Augure_Minefi/r/ContenuEnLigne/Download?id=8516AF19-75EF-465F-BE7C-C6E1BA183CD5&filename=2081-993%20-%20CP%20Fiscalit%C3%A9%20frontaliers%20cov-19.pdf)