

## Information on government measures up to 19 March 2020, and opportunities for employers, employees, and taxpayers

Dear Partner,

**Our office aims** to keep you informed of any changes regarding the current emergency.

To date, **no provisions** have been announced detailing the government measures taken so far (including Government Decree 47/2020 (III. 18.) detailed below).

Before you make any decisions on employment, we urge you to wait until the announcement of such clarifying provisions, which will take the form of government decrees in the coming days.

With regard to the **provisions already known**, we would like to highlight the following:

- Certain benefits relating to employment and the payment of public dues are restricted to persons working in the tourism, hospitality, entertainment, gambling, film, performing arts, event organizing and sports services sectors, and to business entities operating in these sectors. Based on the data and legislation **currently** available, only persons carrying out one of the aforementioned activities as their main activity (as recorded in the company register) may apply the relevant provisions **without any doubts**. For others, application of these provisions cannot be ruled out, but is currently in question (hopefully, future regulations will resolve the issue).
- **However, it is true for all employers** that in the case of mutual consent with the employee, they may enter into an employment contract with **content deviating** from that which is stated in the Labour Code, or may amend existing contracts in such a way (up to thirty days after the end of the declared state of danger).

We will notify you as soon as the relevant details mentioned above are announced.

### I. Government Measures

On 19 March 2020, on the day following its announcement, Government Decree 47/2020 (18 March) on immediate measures necessary for alleviating the effects of the coronavirus pandemic on national economy (hereinafter: Government Decree) came into effect with the following key provisions.

## **1. In respect of debt and other similar contractual obligations**

Unless otherwise provided by the parties, during the period of state of danger, the capital, interest and fee payment obligations of debtors arising from credit, loan or financial lease contracts offered on a commercial scale by the creditor (e.g. car leasing too) shall be modified to provide an extension to the debtor for the performance of his capital, interest and fee payment obligations arising from the contract (hereinafter: "payment moratorium").

The payment moratorium shall not prejudice the right of the debtor to pay in compliance with the original contractual terms and conditions.

As a consequence of the modification of a contractual performance time limit above, any ancillary or non-ancillary secondary obligation securing the contract shall also be modified regardless of whether the parties recorded the secondary obligation in a contract or a unilateral juridical act.

The payment moratorium shall expire on 31 December 2020, unless extended by the Government by means of a decree.

The performance time limit for contractual obligations and the period of commitments shall be extended by the period of the payment moratorium. Any contract expiring within the period of state of danger shall be extended until 31 December 2020.

The provisions above shall apply to loans already disbursed on the basis of contracts existing at midnight, 18 March 2020.

The annual percentage rate for consumer credits not secured by lien shall not exceed the central bank base rate plus five per cent, provided that they were taken out on the basis of a contract concluded after 19 March 2020.

For the time being, bank guarantees are not affected by the payment moratorium. Further detailed regulations may later include a provision to that effect.

The provisions in Section 1 above apply to **both economic entities and private individuals, regardless of the sectors in which they operate.**

## **2. Provisions concerning lease agreements**

In respect of sectors offering **tourism, catering, entertainment, gambling, film industry, performing arts, event organising and sports services**, lease contracts for premises not to be used as flats shall not be unilaterally terminated by 30 June 2020. The Government may extend, by means of a decree, the period of prohibition of unilateral termination until the end of the period of state of danger.

The associated rental fee shall not be increased during the period of state of danger, even if doing so is otherwise permitted under the contract.

**The provisions in Section 2 apply only to persons working in specific sectors.**

### **3. Provisions concerning the payment of public dues**

**Regarding business units operating in tourism, catering, entertainment, gambling, film industry, performing arts, event organising and sports services**, for the months of March, April, May and June 2020,

- a) employers shall be **exempt from public dues payable after the wage** of employees employed,
- b) from among the **contributions payable after the wage of employees employed**, only the obligation to pay in-kind health insurance contribution shall apply, with the proviso that its monthly amount shall not exceed the monthly amount of HUF 7710 of the health service contribution.

Persons liable for payment of **tourism development contribution** shall not be required to pay tourism development contribution for the period between 1 March 2020 and 30 June 2020; and for this period, tourism development contribution shall not be declared or assessed.

For the months of March, April, May and June 2020, **taxpayers performing passenger transport services** subject to small business lump-sum tax shall be exempt from their tax payment obligation under the Act on small business lump-sum tax and small business tax.

**The provisions in Section 3 apply only to persons working in specific business units.**

### **4. Provisions concerning employment**

With a view to ensuring compliance with the prohibitions and restrictions ordered within the period of state of danger declared in Government Decree 40/2020 (III.18.) on the declaration of state of danger, Act I of 2012 on the Labour Code **shall apply with the following derogations for 30 days after the termination of the state of danger:**

- a) The employer may alter a drawn up work schedule even in ways different from those described in Section 97 (5) of the Labour Code (i.e. not only 96 hours in advance).
- b) The employer may unilaterally order employees to work from home, or to work remotely.
- c) The employer may take necessary and justified measures for inspecting the health of employees.

d) The provisions of collective agreements derogating from the rules set out above may not be applied as long as Government Decree 47/2020 (III.18.) is in force.

**e) The employee and the employer may come to a separate agreement departing from the provisions of the Labour Code** (i.e. the parties may reach mutual agreement on issues that deviates from the provisions of the Labour Code).

**The provisions in Section 4 above shall apply to all persons, regardless of the sectors in which they operate.**

**It is important to note that the Government will lay down detailed rules for the above sections (1-4) in separate government decrees (see Section 7 of the Government Decree); therefore, it may be appropriate to wait for those decrees before taking any measures.**

## **II. Fee concessions**

Economic entities finding it difficult to pay public dues are entitled to request a reduction in the amount of the advance payment or, in addition to deferred payment, may also request an instalment tax payment scheme.

In the current situation, the National Tax and Customs Administration of Hungary is judging these requests less strictly than usual.

In addition to providing a solution to the temporary payment difficulties experienced by companies, these concessions can also help preserve jobs.

“The National Tax and Customs Administration of Hungary is taking the economic impacts of the coronavirus into account, and is handling entrepreneurs’ requests for payment relief equitably,” stated the secretary of state for tax affairs.

### **Regarding advances to be paid:**

The amount of the advance shall be determined on the basis of the performance of the preceding business year. The chief executive should definitely ask for a reduction if the coronavirus epidemic has reduced revenues to such an extent that the corporate tax is less than the amount of the tax advance payable in the tax year. The procedure is simple: it is sufficient to complete and electronically submit the form **elolegmod**, available on the tax authority’s website.

Those who are required to pay monthly advances can apply for a reduction of their tax advances by 20 March, and those who pay quarterly advances by 20 April.

In addition to the corporate tax advance, the amount of the small business tax, innovation contribution and income tax advance for energy suppliers may also be reduced.

### **Regarding the payment of taxes:**

Payment relief is available not only for tax advances, as the pandemic can also affect the timely payment of taxes.

Due to the revenue-reducing effect of the coronavirus, **deferral or payment by instalments may be requested for tax payments**. For example, businesses pay the social contribution tax after their employees on a monthly basis, VAT is paid monthly or quarterly, and they are entitled to request relief for all of these from the tax authority, as well as for special tax types.

Thus, in the event of payment difficulties, taxpayers of the small business tax (KIVA) or the tax on low tax-bracket enterprises and on small businesses can apply for payment relief from the authority, which the NTCA shall decide on equitably.

Unfortunately, **tax reduction** in the general sense is not available to companies under the Taxation Act, as it is an option that **only** private individuals can apply for.

Unfortunately, the general and strict rules continue to apply to the reduction and exemption of **finances**, both of which continue to require compelling reasons for relief.

### **III. Options Available to Employers and Employees**

In the current situation, employers can be divided into two categories

1. Those who are able to provide work;
2. Those who are no longer able to provide work, due to the nature of their activities.

#### **1. If the employer is able to provide work**

- It can maintain normal workflows and sessions while paying regular wages;
- It can order teleworking (working from home office) for the sake of its employees' health;
- By reducing the amount of work/hours, the employer can reduce full-time employment to part-time, and proportionally lower wages (the opening hours of shops are limited to between 10 am and 3 pm, and there is drastic reduction in orders).
- The employer might order the application of a quota for working hours, and may introduce unequal working times.

## 2. If the employer is unable to provide work

- The employer may allocate vacation time for the employees from their annual leave, whether from the amount allocated for the entire year, or on a pro rata temporis basis;
- The employer can furlough employees, granting them downtime. This may be paid downtime, including base wages and wage supplements as per Section 146 (1) of the Labour Code. By default, it is mandatory if the employer is unable to provide work for reasons beyond its control.
  
- By agreement, the employer can pay for lost time, pursuant to Section 146 (2) of the Labour Code. If the employer is unable to provide work and pay its contractual wages, and the employee proposes an exemption; remuneration shall be in accordance with the agreement between the employer and the employee;
- Unpaid downtime [Section 146(1) of the Labour Code of Hungary]; e.g. the employer is unable to provide work or pay any wages, due to external circumstances beyond its control; in such case, the employee's insurance is suspended. If the unpaid downtime exceeds 30 days; for the purposes of sick pay eligibility, his or her continuous insurance coverage period is interrupted, meaning that he or she must pay health care contributions as of the first day. The monthly amount of such contributions is HUF 7710/month, or HUF 257/day;
- Termination of employment: this can happen either by mutual consent or by notice. In the event of termination, the rules for termination (notice period, severance pay) shall apply. In this case, the (former) employee is entitled to benefits for 45 days under passive sick-pay [Section 29(9) of the Act LXXXIII of 1997 on the Benefits of the Compulsory Health Insurance], and may apply for jobseeker's benefit.
- Unpaid leave can be requested. Only employees are entitled to apply for unpaid leave. In this case, the employee's insurance is suspended from the first day. If the term of unpaid leave exceeds 30 days, for the purposes of sick pay eligibility, his or her continuous insurance coverage period is interrupted. He or she must pay health care contribution—HUF 7710/month and HUF 257/day—as of the first day.

### Handling absences due to epidemic

1. Coronavirus infection: Code 7 patient sheet; if contracted at the workplace, it is classified as an accident at work, and the employee will be entitled to 100% sick pay;  
No sick leave is taken, the employee is entitled to sick pay from day one. The employer does not have to pay one-third of sick pay, either;
2. Voluntary quarantine may occur at the expense of unpaid certified absence (in the latter case, insurance coverage is suspended as in the case of unpaid leave). This choice is a matter of agreement;

3. In case of a mandatory quarantine imposed by the authorities, the employee is not entitled to wages but will receive sick pay.

Absence due to epidemic with minor(s) of mandatory school age

1. Due to the closure of a school or kindergarten, if the minor's supervision cannot be ensured, the employer may grant vacation time from the annual leave, record it as unpaid certified absence (Section 55(1) of the Labour Code) or, if possible, may order the employee to work from home;
2. In the event of a child being quarantined, the employee can, if possible, work from home, the employer may grant vacation time from the annual leave, or the employee can collect sick-child care pay;
3. If a child is infected with the coronavirus, the employee living in the same household will receive a code 7 patient sheet from the medical institution. The guidelines above shall apply in these cases as well: Eligibility to sick pay from the first day, and the employer does not have to pay 1/3 of sick pay.

Another option for the employer for retaining employees is to provide a salary advance.

Should you have any questions regarding the above, **please** feel free to contact your account manager.

With requests to prepare or review **preferential payment terms or employer agreement templates**, please contact our Legal and Tax Consulting Department (dr. Rita Báló at 20/438-6019, rita.balo@bergmann.hu; Zsolt Rózsa at 20/745-7108, zsolt.rozsa@bergmann.hu; dr. Péter Madai at 20/745-7094, peter.madai@bergmann.hu).

**Yours sincerely,**

**The staff of Bergmann Iroda**