

**Webinar: Responding to COVID-19  
Support measures relevant to the diamond industry**

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# Introduction

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# Experts



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# Direct tax measures

Philippe Van Krunkelsven, Partner, Global Business Tax

# Direct tax measures | Federal

## 1. Delay of filing due dates

### Corporate income tax, legal entities tax and non-resident tax returns:

**Tax returns** with a due date between 16 March and 30 April are granted an **automatic extension until 30 April**.

This applies to corporate income tax, legal entities tax and non-resident tax returns.

### Not automatically applicable to other types of tax return filings:

Note that the automatic extension is not applicable to TP documentation filings (e.g. TP Master File), withholding tax returns (e.g. dividend, interest and/or royalty payments), requests for information (“Vraag om inlichtingen”), notice of amendments (“Bericht van wijziging”), periods for filing a tax claim (“Bezwaarschrift”), etc.

⇒ Be careful !

# Direct tax measures | Federal

## 2. Delay of payment due dates

### Payroll withholding tax:

An **automatic extension for payment** has been granted, depending on the taxable period:

Period	Submission deadlines (extended)
Monthly February return	13 May 2020
Monthly March Return	15 June 2020
Q1 of 2020 Return	15 June 2020
Monthly April Return	15 July 2020

### Automatic deferral of payment for corporate income tax, legal entities tax and non-resident tax:

Tax liabilities **assessed from 12 March 2020** (and related to tax year 2019) are granted an **automatic** extension of two months.

Request for deferral available for tax assessed before 12 March 2020 (see next slide).

**No penalties or late payment interest will be due.**

It should be noted that these measures can be applied regardless of whether company activities are negatively affected by COVID-19.

### All taxes – deferral on request:

All Belgian registered businesses, which can demonstrate being negatively affected by the COVID-19 outbreak, can **request payment deferral**.

This applies to corporate income tax, legal entities tax, payroll withholding tax and VAT, **assessed before 12 March 2020**.

Affected persons can request aid in the form of:

- ✓ payment plan in arrears,
- ✓ exemption from late payment interest and
- ✓ remission of fines for non-payment.

Requests need to be **filed by 30 June 2020** at the latest (but consider prompt request to anticipate delay in answers), either by mail or letter to the competent regional centre.

Forms for such a request are available on the FOD/SPF Finance website ([Dutch](#) | [French](#)).

# Direct tax measures | Federal

## 3. Increase of CIT prepayment credits

### Corporate Income Tax Prepayments:

	<b>CIT credits (no dividend distribution)</b>	<b>CIT credits (but dividend distribution)</b>
Q1 (10/04)	9%	9%
Q2 (10/07)	7.5%	7.5%
Q3 (10/10)	<b>6.75%</b>	6%
Q4 (20/12)	<b>5.25%</b>	4.5%

The government has decided to **increase the CIT prepayment credits for the third and fourth quarter.**

With this measure, postponing CIT prepayments is less detrimental.

The table above shows the amended credits for tax prepayments. As mentioned, the percentages of third and fourth quarters have been increased (unless e.g. there is a dividend payment, see below).

The measure is intended for companies with liquidity problems. Therefore, this does not apply to companies that:

- buy back own shares or perform a capital reduction;
- pay or declare dividends between 12 March 2020 and 31 December 2020.

The **increase for insufficient prepayments** as well as the **due dates of the prepayments** remain **unchanged.**

# Direct tax measures | Federal

## 4. Teleworking allowance & write-downs on trade receivables

### Teleworking allowance:

**Ruling commission** published a **request template** to ask confirmation that enterprises can grant a teleworking allowance to the staff, considered as a reimbursement of costs proper to the employer and being not part of the taxable remuneration of the employees.

The tax exempt teleworking allowance could be **granted to all employees with no distinctions** by functions performed and limited to a forfeit of EUR 126,94 per month.

It should be in place for the time the measures to fight the Covid-19 outbreak are in place and cannot be duplicated with existing allowance for tele-working.

### Circular 2020/C/45: write-downs on trade receivables

**FOD/SPF Finance** issued on 23 March 2020, the **circular 2020/C/45** confirming that the crisis caused by the Covid-19 virus can be considered as an exceptional circumstance justifying the exemption from write-downs on trade receivables.

Reference is also made to the existing guidelines in the administrative commentary to the BITC, which remain relevant.

Applicable to trade receivables, but not to bonds or other similar securities (bank savings certificates, certificates, etc.). Trade securities (e.g. bills of exchange) are entitled.

Existing conditions cf. art. 48 BITC and art. 22 RD/BITC remain applicable, especially that the probability of the loss must result from exceptional circumstances that occurred during the taxable period.

COVID 19 crisis = exceptional event that justifies exemption of write-downs related to enterprises with overdue payments as a direct or indirect consequence of the Federal measures.

Some leniency allowed in assessing the payment difficulties of debtors who suffered a significant turnover loss.

[Circulaire 2020/C/45](#)

# Other tax measures | Regional

## 5. Other measures

### Other measures from regional governments:

#### Flanders:

- Delay in issuance of tax assessment for property tax
- 4 months payment delay for traffic taxes
- Lenient in approving payment plans
- No increase of registration duties due to late registration

#### Brussels:

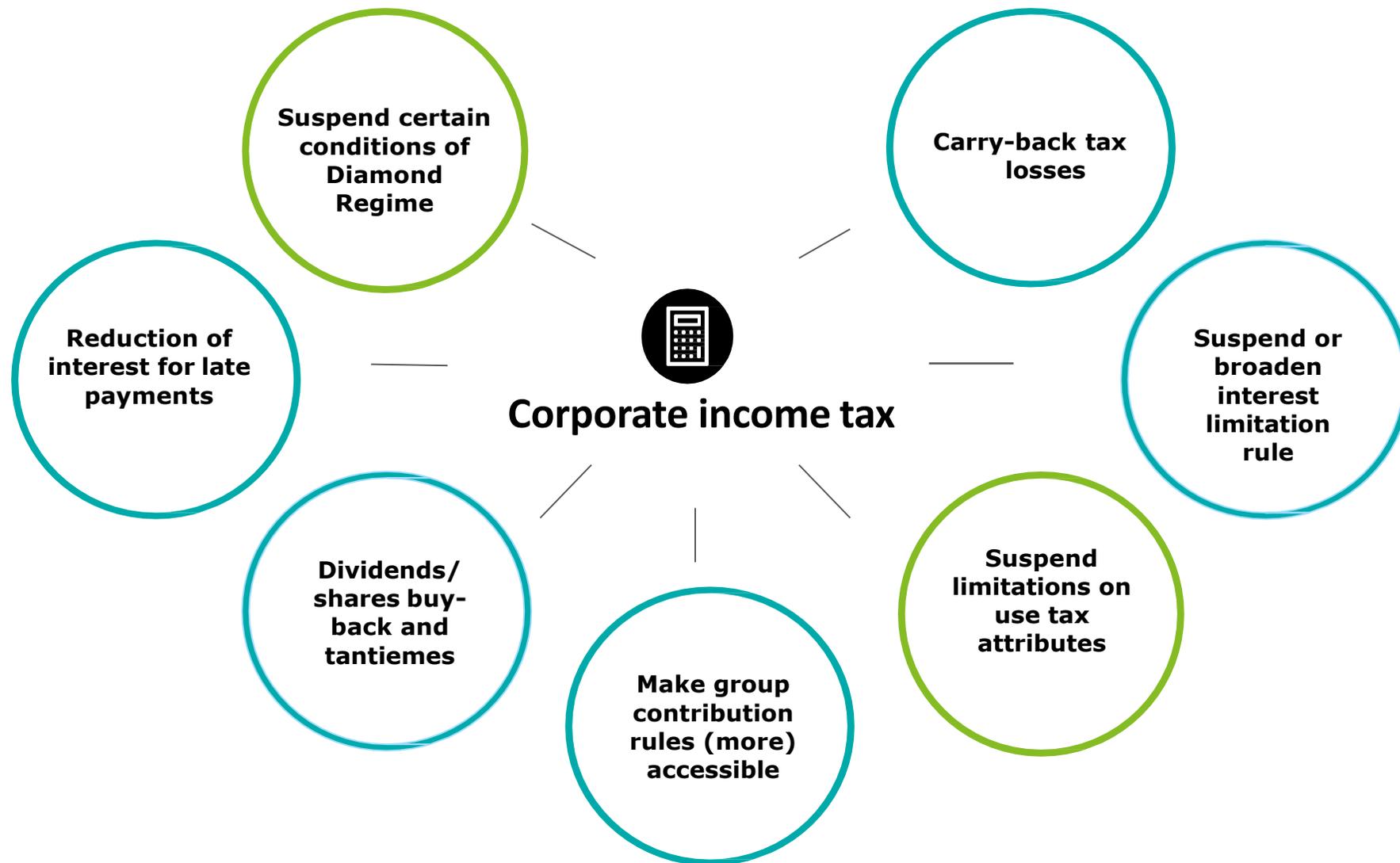
- Lump sum compensatory allowance
- Elimination of the city tax for the first half of 2020
- Moratorium on capital repayment of loans granted by Finance & Invest

#### Wallonia:

- Lump sum compensatory allowance
- Moratorium on loan repayment of loans granted by regional agencies SRIW, SOGEPA GROUP, SOWALFIN
- Others

# Government tax measures and incentives

## 6. Measures anticipated / (to be) requested



# VAT measures

Pieter Van Hoecke, Partner, Indirect Tax

# VAT measures | Federal

## 1. Delay of filing due dates

### Periodical VAT Returns:

<b>Period:</b>	<b>Submission deadlines (extended):</b>
February 2020	6 April 2020
March 2020	7 May 2020
1 <sup>st</sup> quarter 2020	7 May 2020
April 2020	5 June 2020

*Taxpayers entitled to monthly VAT refunds should file their VAT return by the 24<sup>th</sup> of the month following the return period at the latest in order to benefit from the monthly refund.*

### European Sales Listing (ESL):

<b>Period:</b>	<b>Submission deadlines (extended):</b>
February 2020	6 April 2020
March 2020	7 May 2020
1 <sup>st</sup> quarter 2020	7 May 2020
April 2020	5 June 2020

### Annual Sales Listing (ASL):

<b>Period:</b>	<b>Submission deadlines (extended):</b>
2019	30 April 2020

### Intrastat:

<b>Period:</b>	<b>Submission deadlines (no automatic extension – on request):</b>
e.g. March 2020	20 April 2020

# VAT measures | Federal

## 2. Delay of payment due dates

### VAT Payments related to:

<b>Period:</b>	<b>Submission deadlines (extended):</b>
February 2020	20 May 2020
March 2020	20 June 2020
1 <sup>st</sup> quarter 2020	20 June 2020
April 2020	20 July 2020

# VAT measures | Federal

## 3. Accelerated VAT refund (conditions)

### Conditions accelerated VAT refund:

#### What ?

Accelerated refund for taxpayers in a VAT refund position next to the already existing refund facilities for taxpayers with a license for monthly refund or starting businesses.

In principle taxpayers can only request vat refund at the end of a calendar quarter.

E.g. VAT refund can be requested via the VAT return related to March 2020 => refund to be expected end of May 2020 or June 2020.

#### When ?

This was yet **only** foreseen for the monthly VAT-return related to **February 2020**. If this return was filed *by April 3th at the latest*, the taxpayer could receive the refund of its VAT credit by the end of April.

*Similar measures might also be implemented for the next periods (not yet confirmed)*

#### Conditions (relating to the February VAT-return) ?

- Only monthly submitters of VAT-returns
- Return should be filed via Intervat
- The box "refund request" should be ticked (the return had to be filed by the 3th of April)
- Minimum amount of 245 Euro
- All VAT-returns current calendar year must be filed
- The Tax Administration knows your account number for VAT refunds
- There must be no objection to this repayment

# Employment measures

Sofie Bontinck, Director, Employment Law (Deloitte Legal)

# Employment measures | Federal

## Temporary unemployment for force majeure

### Unemployment for force majeure

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#### What's new ?

All cases of temporary unemployment due to COVID-19 considered as "temporary unemployment for force majeure" (since 13 March 2020 – as long as the protective measures of the government last – currently applicable until 31 May 2020)

#### Available for:

Employees who are **unable** to perform any work (force majeure) *and* employees who have **less** work due to a drop in client work (economic reasons), for example:

- Employees who cannot be employed anymore because of their specific **function** (e.g. receptionists, event officers)
- New hires (contracts signed before 13 March 2020 or meeting the conditions prescribed by the NEO) who cannot be properly onboarded/coached
- Sales people who can no longer visit their customers because they are closed or work from home and for whom no other work is available
- Internal functions who are indirectly affected because of reduced client work (e.g. recruitment officers due to recruitment freeze)

#### Conditions / Criteria

- No specific conditions or criteria anymore BUT no free ticket !
- Accepted for **all employers affected by COVID-19**, either because they have to close down or because they are experiencing economic hindrance
- Not for people residing abroad and subject to foreign social security

### Unemployment for force majeure

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#### Modalities

- Full-time or part-time (however only possible to take per full day!)
- Whole teams or individual employees
- Rotation system seems possible (force majeure for Group A in week 1 and force majeure for Group B in week 2)

#### Consequences

- Employment contract (partially) suspended -> no employment and payment of salary
- RVA allowance of max. EUR 1.928,33 gross  
(70% of the average salary (max. EUR 2.754,76) - subject to withholding tax 26,75% but taxed progressively in income tax return)
- Supplement of EUR 5,63 per day – paid by trade union/Hulpkas voor Werklozen

#### Supplement

- Possible to pay supplement on unemployment benefits to reduce income loss
- Exempted from social charges if total gross income during TU is  $\leq$  taxable salary
- Subject to income withholding tax 26,75%
- Mind non-discrimination principle Art. 45 Social Security Act: no unlawful distinction between employees belonging to same category of personnel
- No formalities but advisable to confirm the principles via e-mail/letter: context, amount, duration of the period covered by an allowance and conditions and safeguards for the company

# Employment measures | Federal

## Temporary unemployment for force majeure

### Simplified procedure

If further employment is temporarily entirely impossible or if there is temporarily less work as a result of significant drop in turnover, production, customers or number of orders **due to COVID-19**, employers can apply for one system of temporary unemployment: **temporary unemployment for force majeure**.

The usual procedure for temporary unemployment for force majeure has been **simplified** and can be summarized as follows:



This simplified procedure applies regardless of whether the employer had already submitted a request of temporary unemployment for force majeure or economic reasons for the period from 13 March 2020.

*\* For the duration of the strict COVID-19 measures (until 31 May 2020), the employer must no longer request temporary unemployment to the RVA/ONEM. This period can be extended until 30 June 2020, if the strict COVID-19 measures are extended or enforced by the government.*

*\*\* Employees who are temporarily unemployed are exempted from this obligation during the months March, April, May and June.*

# Employment measures | Federal

## Temporary unemployment for force majeure

### ***Vacation***

TU days will be assimilated with working days for the calculation of the legal vacation entitlements (number of days + vacation pay):

- TU for economic reasons: already included in the law
- TU force majeure: to be confirmed via a separate Royal Decree

### ***Group insurance***

Company plan must be verified

General principles:

- DC plan: suspended as of day 1 of full-time TU, not in case of part-time TU
- DB plan: TU days are not considered for the calculation of the number of service years (some plans deviate from this rule and assimilate certain periods)
- Incapacity coverage: typically ends after 30 days of full-time TU, not in case of part-time TU
- Medical costs coverage: typically ends as of day 1 of full-time TU, not in case of part-time TU

Assuralia:  
Insurance companies will maintain life and death coverage, invalidity and hospitalisation during TU and allow employers delay of premiums payment until 30 September 2020.

### ***Legal pension***

TU days are assimilated with working days for the calculation of the legal pension entitlements  
The calculation will be based on the normal capped notional salary (not on the reduced TU allowance)

### ***Termination modalities***

- Severance pay: No immediate impact – calculation still based on the regular annual salary as if there is no TU
- TU for economic reasons: employee is entitled to terminate the employment contract immediately, without notice/severance pay
- TU for force majeure: employee has to respect the regular notice/severance pay

### ***Reimbursement of costs***

- Reimbursement of costs based on tickets: only possible for expenses on working days
- Lump sum cost allowances: tax ruling / company policy to be verified (Stipulations regarding the nature of the costs and the payment during suspension of the employment contract?)

# Employment measures | Federal

## Temporary unemployment for force majeure

### ***Guaranteed pay in case of sickness***

In principle:

- *Employees already ill before the TU*: entitled to guaranteed pay, even beyond the start of the TU, followed by allowances of the insurance fund (mutualiteit/mutuelle) as long as they provide medical certificates. After the period of sickness, the employee will receive TU allowances for the remainder of the TU period
- *Employees turn ill during TU*: no guaranteed pay for TU days, immediately allowances of the insurance fund (instead of TU allowances)

Note that the National Institute for Sickness and Disability Insurance (RIZIV/INAMI) takes the position that the entitlement to guaranteed pay stops as from the TU, even if the employee was already ill at that time.

While this is clearly in the benefit of the employer, there is no legal basis whatsoever for this position (explicitly acknowledged by the RIZIV/INAMI). Therefore, if the employee/trade unions would claim the remainder of the guaranteed pay (in the scenario of illness before commencement of the TU), you have no conclusive case to refuse such claim

### ***Benefits in kind (company car; mobile phone; laptop)***

Part-time TU: benefits are continued

Full-time TU:

- the employer has the right to claim the benefits back during the suspension (unless otherwise stipulated in the policies at company level); but
- the employer is not obliged to do so (e.g. temporary nature of the TU regime vs. a lot of administrative burden/human contact if the employees have to return the benefits)

If continued, payroll should process the benefits just like in other cases where the employee maintains the benefit (e.g. during maternity leave or during illness of +1 month)

Note that the ruling commission has been asked to confirm whether they accept that employees no longer enjoy a BIK for the company car because of COVID-19. Reply still awaited, yet rather doubtful since the car is assumedly still used for limited private use

### ***Salary components linked to working days***

For TU days, the employer cannot pay salary components linked to actual performance on working days (meal vouchers; shift premiums; etc.)

# Social security measures | Federal

## Social security contributions

### What ?

#### **1. Postponement of payment of social security 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2020 until 15 December 2020**

- Companies that are compulsorily closed (*automatically*)
- Companies which have decided to close (*statement on honour*)
- Companies whose economic activity is substantially reduced in the second quarter of 2020 ( = reduction of at least **65%** in turnover or payroll compared to the 1<sup>st</sup> quarter of 2020 or the 2<sup>nd</sup> quarter of 2019) (*statement on honour*)

#### **2. Repayment plans due to COVID-19**

- 1<sup>st</sup> and 2<sup>nd</sup> quarters 2020
- apply for an amicable repayment plan with the possibility of exemption from contribution surcharges, interest, ...

# Social security measures | Regional (Flanders)

## Compensation premium of EUR 3,000

### COVID 19 compensation premium for entrepreneurs with a heavy loss of turnover

#### Conditions:

- Companies which are not obliged to close
- suffer (in)direct severe restrictions
- loss of turnover of at least 60% in the period between 14 March 2020 and 30 April 2020 compared with the same period last year

#### Premium:

1. One-off
2. EUR 3,000
3. a maximum of 5 premiums per legal entity if there are several operating seats

# Financial measures

Laurent Godts, Senior Manager, Banking & Finance (Deloitte Legal)

# Financial measures | National

## Overview

Level	Measure	In short	In force
<b>National</b> Federal and sectoral	<b>Credit payment deferral (moratorium)</b>	Payment deferral max 6 months	✓
	<b>EUR 50B Guarantee Scheme</b>	New credit guarantee max. 12 months	✓
<b>Regional</b> Flanders	<b>Extended PMV SME Scheme (&lt; 1,5 mln)</b>	SME subloans and guarantee +1 year	✓
	<b>Extended Gigarant Scheme (&gt; 1,5 mln)</b>	Extended Guarantee Scheme max 6 years	✗
	<b>Corporate Compensation</b>	Compensation for enterprises	✓
<b>Regional</b> Wallonia	<b>Several</b>	Payment deferral and facilities	✓
	<b>Guarantee scheme</b>	Guarantee on ST credit facilities and investment credits	✓
	<b>Corporate Compensation</b>	Compensation for enterprises in some industries	✓
<b>Regional</b> Brussels Cap. Region	<b>Several</b>	Low-interest rate loans and guarantees	✗

# Financial measures | National

## 1. Credit Payment Deferrals

### What

**Facilities granted to companies**, during a maximum of 6 months, the **principal amount does not have to be reimbursed**. Interests, however, do have to be reimbursed. The total term of the credit will be extended in accordance with the period of payment extension. The payment extension does not entail any administrative costs or handling fees.

**Mortgage credits granted to natural persons**, during a maximum of 6 months, **both the principal amount and interests do not have to be reimbursed**. The total term of the credit will be extended in accordance with the period of payment extension. The payment extension does not entail any administrative costs or handling fees.

### Who

**Please note** that public authorities cannot apply for a deferral of payment!

For non-financial enterprises, small and medium-sized enterprises, the self-employed and non-profit organizations **that cumulatively meet the following 4 conditions**:

- The enterprise experiences **payment difficulties** *as a result of the corona crisis*;
- The enterprise is **permanently established in Belgium**;
- The enterprise was **not already in default** with regard to current credits or tax payments or social security contributions on 1 February 2020, or had less than 30 days arrears on its current credits, its tax payments or social security contributions on 29 February 2020;
- The enterprise has **performed its contractual obligations with all banks** during the last 12 months prior to 31 January 2020 and is not subject to active credit restructuring,

for one of the following credits: credits subject to fixed instalments / overdraft facilities / fixed advance payments. By contrast, leasing and factoring are excluded. (a bilateral agreement between the company and the leasing/factoring company is of course possible).

# Financial measures | National

## 1. Credit Payment Deferrals

### How

This lenient position towards debtors was adopted by the Belgian banking sector federation (*Febelfin*) **based on a charter** concluded between all members.

Febelfin has made it clear to us that **banks do not have leeway** if a company fulfills the aforementioned criteria.

On the contrary, **companies that do not meet the conditions for extension cannot rely/expect such extension of payment** based on this charter, but should seek alternative arrangements with their bank (*relationship banking*).

We understand that discussions are underway with the NBB on how this ties in with the **application of the SME Financing Law** (*Geens/Laruelle*).

### When

Febelfin furthermore expects banks to be **operationally ready** to apply these extensions **as of now**.

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Guaranteed portfolio

A **EUR 50 billion guaranteed credit** program implemented to guarantee losses suffered by a credit provider on his guaranteed portfolio of newly extended credit due to the COVID-19 crisis and organized through (i) the Act dated 27 March 2020, (ii) the Royal Decree dated 11 April 2020 implementing the federal guarantee scheme and (iii) the Charter of Febelfin, the NBB and the Federal Government on deferral of payment for corporate credits (annexed to the Royal Decree).

- Guaranteed credits under the Federal guarantee scheme include all credits regardless the form (*kaskredieten, voorschotten op vaste termijn (straight loans), kredietopeningen, garantiefaciliteiten, toegelaten debetstanden (overdraft facilities)*), excluding :
  - Leasing (*leasingovereenkomsten/contrats de location-financement*);
  - Factoring (*factoringovereenkomsten/contrats d'affacturage*);
  - Consumer (*consumentenkredieten/crédits à la consommation*) or residential mortgage (*hypothécaire kredieten/credits hypothécaires*) credits (Book VII of the Code of Economic Law);
  
- The federal guarantee scheme concerns all new credits with maximum term of 12 months, extended between 1 April 2020 and 30 September 2020 (including credit repaid by 30 September 2020) and credit lines, loans or credits , if such engagement is specifically separate obligation, including:
  - Credit facilities granted under a syndicated credit; and
  - Credit facilities which are part of one credit consisting of separate credit facilities (commitments)

#### Exclusion of:

- refinancing credits (*herfinancieringskredieten/ crédits de refinancement*) extended prior to 1 April 2020
- redrawings/revolvers (*wederopnames/ nouveaux prélèvements*) of credit extended prior to 1 April 2020
- Credit to be applied solely for non-Belgian activities
- 'Deselected' (*gedeselecteerde/déselectionné*) credits: although eligible for guarantee, specifically identified in the monthly reporting by the credit institution as out of scope (up to 15% of allocated envelop). Deselection to be earmarked by credit provider at the time of origination (level playing field concern i.e. for corporates that are not/limited impacted by corona)

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Credit providers & Borrowers

Credit providers are the credit institutions (or branches of EU credit institutions) having outstanding exposure on 31 December 2019 on one or more borrowers amounting minimum EUR 20,000 each (55 credit institutions, with 15 representing 98%).

The federal guarantee includes new credits and credit lines granted to **viable non-financial companies**, small and medium enterprises, self-employed persons and non-profit organizations (including e.g. hospitals).

“Viable non-financial companies” are those which:

- Have no arrears on 1 February 2020 under any existing credit, taxes or social security contributions; or no more than 30 days in arrears on 29 February 2020 under any existing credit, taxes or social security contributions;
- Have complied with payment obligations under any credit outstanding with any credit provider during 12 months preceding 31 January 2020;
- Are not subject to “active credit restructuring” (*not defined*) on 31 January 2020 (i.e. restructuring files as of 1 February are covered); and
- Are not considered as being “in difficulties” on 31 December 2020 (*within the meaning of EU State Aid Regulation*).

Any independent natural person or legal entity, exclusive of:

- Public entities;
- Financial counterparties, payment institutions or electronic money institutions
- Persons extending credit exclusively or principally for their own account as part of their normal commercial or professional activities. Hence *krediet/verzekerings-bemiddelaars* are included
- Any persons whose subsidiaries fall within any of the 3 preceding excluded groups

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Maximum limits

The **maximum guaranteed principal** includes all principal amounts owed by a **borrower** under guaranteed debt, but are limited to the lower of the below-referenced amounts confirmed per group to which a borrower belongs:

- €50 million, except if higher amount specifically agreed by Minister (or his delegate);
- The amount corresponding to the liquidity needs of the borrower for a period counted as of the expected time of the credit extension:
  - For a period up to 18 months for SME's (defined as such under the EU State Aid Regulation: 250 employees/50M turnover/43M balance total); and
  - For a period up to 12 months for other companies.
- To define liquidity needs, borrowers are required to provide a motivated declaration in writing related to their needs and transparency regarding other pending credit requests to support their liquidity needs.

Exclusive of liquidity needs for:

- refinancing credits extended prior to 1/4/2020; and
- repayments or redrawings/revolvers (*wederopnames*) of credits extended prior to 1 April 2020
- Ratio between "deselected" and guaranteed credits can not be more than 0.175 (any surplus is penalized)

The **maximum guaranteed interest** includes:

- Maximum 1.25% on an annual basis (360 days); plus
- A compensation of maximum 25 bps for SME's (defined as such in the Code of Companies and Associations i.e. 25 employees/9M turnover/4.5M balance total) and maximum 50 bps for other companies

The **guaranteed portfolio** is limited to the allocated envelop (*toegewezen enveloppe/enveloppe allouée*) which amounts to the maximum total amount of the principal outstanding allocated to a credit provider pro rata to his market share of the corporate credit as of 31 December 2019 in accordance with:

- IFRS/GAAP tables as confirmed by the NBB; and
- Binding decisions of the Minister of Finance (advised by the NBB).

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Guaranteed losses

At **the end of the guarantee arrangement, losses on the guaranteed credits** (part of the guaranteed portfolio) will be shared between the financial sector and the government, as follows:

Tranche of guaranteed losses expressed as % of reference portfolio	Part of guaranteed losses assumed by State
0-3%	0%
3-5%	50%
5-100%	80%

- No guarantee at first demand.
- Losses incurred are the amount of outstanding principal and interests that are definitively lost, *i.e. 'it is determined that the credit provider is unable to recover such amount from the borrower, a third party or in any other manner'*.
- Losses include also amounts outstanding in respect of guaranteed debt that also benefit from other security interests to the extent that the inability to recover results from *pari passu* arrangements as part of such other security interests.
- Any guaranteed losses are calculated at portfolio level and never at individual file level (unlike e.g. Gigarant).

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Guaranteed losses (cont'd)

- Each **credit provider** is entitled to **exclude 15% of eligible credit out of the guarantee scheme**. Deselection factor = deselected/total guaranteed credit between 1 April-30 September 2020 = 0.175 ( i.e. 15/85)
- The **Reference Portfolio** consists of the sum of the following amounts (article 15):
  - all available principal amounts and interest due in respect of all guaranteed credits granted by a lender (or by any related person), including guaranteed credits that are repaid, capped at the maximum guaranteed principal amount of the allocated envelop, increased by 1.75%;
  - this amount multiplied by a factor equal to twice the overrun factor;
  - all available principal and interest amounts of a credit:
    - that is granted by a lender or a person related to that institution between the day on which the RD comes into force and September 30, 2020 to a borrower;
    - which, except as regards its duration, is to be considered as a guaranteed credit;
    - the duration of which manifestly deviates from the practice followed by the qualified credit institution before 29 February 2020 and the qualified credit institution cannot justify this divergence on objective grounds; and
  - all available principal amounts and interest on any credit granted between the day of the entry into force of the RD and the 30 September 2020 to a borrower by a person related to a lender or by a person acting on behalf of this institution qualified and who, except for the lender, is to be considered as a guaranteed credit, when the intervention of this third party (as a lender) clearly differs from the practice followed by the establishment of qualified credit (before the entry into force of the RD and if the credit institution qualified cannot justify this discrepancy with objective reasons).
- **Pari passu:**
  - Following a sharing loss principle, if part of guaranteed losses may be recovered from other guarantees or security interests, the losses reduction applies *pari passu* (by taking into account the amount covered by such other guarantees/security interests).
  - *Pari passu* sharing with security interests vested over “deselected” credit (except for contractual arrangements e.g. margin calls or mortgage mandate conversion)
- We understand that PMV (*Gigant*), Finance&Invest. Brussels and Sowalfin will not allow their programs (*see further*) to cover any credit that is covered under this Guarantee Program.

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Privilege

**State privilege** (*voorrecht van uitwinning/bénéfice de discussion*): the State only held to pay upon confirmation of definitive losses (subsidiary (*suppletieve*) guarantee following enforcement of all other security interests and any other means available to the credit provider to recover debt).

- There is still the opportunity for the credit provider to seek upfront payment of advances (*voorschotten/avances*) but only up to 80% of the expected losses (as calculated by the State).

### Enforcement

**As of 1 July 2021 and by 31 March 2023 at the latest**, call on federal guarantee and no need to provide upfront losses evidence at the time of application, but ultimately evidencing the effective losses incurred taking account accelerating the credit and enforcing all other security interests.

This procedure to be further detailed by the Minister of Finance.

- The federal guarantee enforcement may be suspended in case of non-payment of compensation or non-compliance with deferral of payment scheme (see Charter of Febelfin).
- Any payments owed to a credit provider will be by operation of law compensated with any debt outstanding by such credit provider against the State.
- Any assignment (including charging) of a guaranteed credit results in a loss of the federal guarantee, except in case of repo transactions with the NBB (as part of the latter's statutory mission).

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program



### Reduction of the guarantee

**The federal guarantee may be reduced** in case of (Art. 22):

- Guaranteed credit on which the credit provider has in the meantime accepted forbearance terms (*respijtmaatregelen/mesures de renégociation*) without having offered similar terms to other credit extended by such credit provider to such borrower;
- Securitization (receivable true sale) or security assignment of guaranteed loans as part of a refinancing transaction at credit provider level (e.g. SME loan securitization);
- Non-compliance with substitution of the State in the position of the credit provider following calling on the guarantee or with the guaranteed credit granted for Belgian activities only or so-called 'qualifying foreign' activities up to 10% of the guaranteed credit;
- Lack of notification of a guaranteed credit (as part of the notification requirements to the State (NBB));
- Credit provider has 'failed to encourage the borrower to seek additional security interests';
- Credit provider has failed to hold the State harmless for any claims of underlying borrowers;
- Credit provider makes the granting of such credits dependent on the conclusion by the borrower or a person related to the borrower of contracts relating to other products or services;

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Reduction of the guarantee

- Credit provider asking for additional fees other than the ones that he commonly applied as part of his general terms and conditions as per 29 February 2020;
- Gross negligence (“*grove nalatigheid*”/“*negligence grave*”) on behalf of the credit provider at the time of extending the credit if he could or should have known that such negligence could give rise to a rise in costs or losses to be borne by the State under the guarantee. Gross negligence is deemed to exist when:
  - The credit provider knew or should have known that the borrower did not qualify under the guarantee definition;
  - The credit provider ‘reasonably’ knew or should have known that the borrower was applying for additional guaranteed credit at other credit providers, as a result of which the maximum guaranteed amounts of such borrower or the group to which he belongs would have surpassed the aforementioned limits;
- Simultaneously with extending guaranteed credit, additional security interests for existing debt (without having allocated the additional security interests on a pro rata basis to the guaranteed credit). If so, the losses on the additional credit that received the benefit of the security interests will be entirely deducted from the amount of guaranteed losses (and not just a pro rata part); or
- Refusal of any amounts relating to drawings under pre-existing facilities by a credit provider without reason in the period between 1 April 2020 and 1 October 2020.

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program

### Annulment of the guarantee

**The federal guarantee may also be annulled** in case of (Art. 23):

- Failure to calling on the guarantee prior to 31 March 2023;
- Non-payment of the aforementioned compensation (25/50 bps) to the State;
- Non-compliance with the deferral of payment scheme (except in case of excusable negligence of the credit provider);
- Refusal to renew any credit extended prior to 1 April 2020 (on a maturity prior to 30 September 2020) without any objective justification (as far as the borrower qualifies under the definition of eligible borrower); or
- Fraud by the credit provider in respect of notifying the State (NBB) of the guaranteed portfolio.

# Financial measures | National

## 2. EUR 50b Guaranteed Credit Program



### Obligations

- **Credit providers** are required to comply with:
  - Interest rates no higher than 1.25%. The sanction applied will be the repayment of the difference to the borrower plus an amount corresponding to the statutory interest;
  - 'good practices' in respect of extending credit and obtaining security interests, on an at arm's length basis and in conformity with their respective practices (general Terms & Conditions) applicable prior to 1 April 2020; and
  - No circumvention of the rules on guaranteed credits.
- **Borrowers** are required to provide information in good faith as regards with their declaration and fill the credits application to finance activities in Belgium only or up to 10% for qualifying foreign activities (non-exhaustive).
- As arrangements under the RD are concluded on a contractual basis between the State and credit providers, additional contractual arrangements may be provided to the extent that no deviation from the Act dated 27 March 2020 is made.
- In case of disputes, the Minister can accept settlements or arbitration procedures, as alternative to court procedures.
- NBB and Febelfin will set up a system to monitor these measures.
- Febelfin updated Q&A will be uploaded on NBB website – Febelfin liquidity calculator tool

# Financial measures | Flanders

## 1. Extended PMV / Gigarant Scheme (>1,5 mln)

### What

The 2009 statutory **Flemish Gigarant guarantee** arrangement managed by Participatie Maatschappij Vlaanderen ("PMV") has been extended from EUR 1,5 billion to EUR 3 billion to cover a special Covid-19 guarantee, more flexible than the 2009 normal guarantees.

Cleared by European Commission on 9 April 2020.

### How

The Gigarant guarantee aims at a longer term arrangement and is granted on a file-by-file basis, as part of a **three-party arrangement** between the lender(s), the borrower and Gigarant/PMV.

# Financial measures | Flanders

## 1. Extended PMV / Gigarant Scheme (>1,5 mln)

### Key Characteristics

- **Open for all sectors**
- Second in line (after Federal “Bazooka”)
- **Working capital and investment loans**
- **New and existing loans**
- No limitation on maturity
- Limitation on loan amounts
- Guarantees for loans (up to 80% of loan principal)
- **Not an undertaking in difficulty on 31 December 2019**
- Maximum duration: 6 years

### Premium

	1st year	2nd-3rd year	4th-6th year
SME	25 bps	50 bps	100 bps
Large enterprises	50 bps	100 bps	200 bps

# Financial measures | Flanders

## 2. Entended PMV / SME Scheme (<1,5mln)

### What

Extension of the existing SME guarantee scheme both in size (now EUR 400m), scope and *price*:

- **bridge loan guarantee** for existing non-bank debts is now raised from 3 months up to 12 months  
(the payment term of the invoices, not the credit itself – starts from the moment of signing the agreement. In other words, debts that arose more than 12 months before the signing of the credit agreement will not be covered by the crisis guarantee scheme)
- one-off premium is now lowered from 0.50% to 0.25%
- **guarantees** for bank debts under existing credit facilities and investment credits not yet covered by the guarantee arrangement, to the extent that the bank is prepared to grant a payment extension of minimum 3 months.

### Who

Companies that are unable to pay their personnel, purchase raw materials or pay invoices, that are now unable to find financing for their working capital from banks.

The duration of the guarantee scheme is limited to a **maximum of 10 years** for **amounts up to EUR 750,000**.

The applicant who wishes to make use of the guarantee, should motivate that the **guaranteed credit will be reserved** for solving the coronavirus-related financial problems.

# Impact of COVID-19 on your financing contracts

Laurent Godts, Senior Manager, Banking & Finance (Deloitte Legal)

# The loan facility agreement as a radar

## Key clauses to be reviewed

### Indicative list – No “one size fits all” principle

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#### REPRESENTATIONS, WARRANTIES and UNDERTAKINGS

**Timing** – Repeating representations ?

**Scope** – borrower/any member of the Group

Carefully look at:

- *No insolvency*
- *No proceedings*

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#### FINANCIAL COVENANTS

**Timing** – testing period

**Scope** – borrower/consolidated at group level

Carefully look at:

- *Cash flow covenants*
- *Leverage covenants*
- *Cash covers*

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#### FORCE MAJEURE and HARDSHIP

**Force Majeure** – not applicable to payment obligations

**Hardship** – not recognised unless explicitly agreed upon

***Interaction with moratorium ?***

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#### EVENTS OF DEFAULT

Carefully look at:

- *Non payment*
- *Insolvency, cessation of business*
- *Audit qualification*
- *MAE/MAC (?)*
- *Cross-default*

# Impact COVID-19 on (retail) leases

Maximilien van de Werve, Partner, Real Estate (Deloitte Legal)

# Problem specification

## Closure of almost all shops and stores

### Ministerial Decree of 24 March 2020 (replacing several previous Decrees) :

- **Closure of all shops and stores** with the exception of:
  - Grocery stores
  - Pet food stores
  - Pharmacies
  - Newspaper shops
  - Service stations
  - Telecom stores
  - Shops for medical devices
  - *Garden / Do it yourself stores*
- Until 19 April 2020 (*3 May 2020*)

→ **Tenants are unable to use the premises as intended and refuse to pay rent/ask reduction**



# Can a tenant refuse to pay rent or ask a reduction ? Can a landlord deny such request ?

## No specific interim regulatory measures taken to date – Federal & Regional competence

### Tenant

#### Force majeure

If the premises are partially destroyed due to a fortuitous event (material or *legal* destruction), the tenant may demand for reduction in rent

Tenant must demonstrate:

- 1) Force majeure: insurmountable, unavoidable and unforeseeable event, independent of any fault of the debtor
- 2) Impossibility for the landlord to grant the enjoyment of the premises

⇒ *Differentiation between retailers confronted with mandatory closures & other tenants*

⇒ *Difficult situation for retailers confronted with partial closures*

**Force majeure = difficult to invoke especially when the tenant is not forced to close**

### Landlord

#### Counter arguments

<-> paying rent (main obligation of the tenant) has not become impossible

<-> not the landlord, but the government impacts the tenant

<-> extension of the lease agreement as long as the force majeure exists

<-> stipulations in the lease agreement

**What about charges/taxes/other costs ?**

**Not specified in Civil Code ("CC"), no case law**

# Can a tenant refuse to pay rent or ask a reduction ? Can a landlord deny such request ?

## Stipulations in lease agreement

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### Specific force majeure clause

- Specification allocating the risk of force majeure/"fait du prince" to a specific party
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### New Regulation clauses

- "All consequences of new regulations will be borne by the tenant"
- Tacit waiver of right to invoke force majeure ?

<-> intention at time of signing of the agreement: only to cover regulations requiring works e.g. upon permit renewal

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# Can a tenant refuse to pay rent or ask a reduction ? Can a landlord deny such request ?

## Other legal reflections

### Rent adjustment clause

- Article 6 of Retail Leases Act:
  - Tenant can ask for adjustment of the rent
  - at the end of each three-year period
  - new circumstances -> rental values is at least 15% lower

### Hardship & Abuse of rights

- Abuse of rights
  - Landlord exercising its right to payment
  - *Bonus pater familias* criteria
  - Disproportion between advantage of landlord and harm of tenant
- Hardship. Adaptation of contract if unforeseen circumstances render the performance for one of the parties more onerous typically rejected by courts unless contractually agreed

### Grace period

- Can be granted by the judge
- Tenant has to prove he is unfortunate and in good faith
- Case-by-base
- Caution that a gesture cannot be invoked as precedent by another tenant

# Can a tenant refuse to pay rent or ask a reduction ? Can a landlord deny such request ?

## Practical checks

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Forced (retail) closure?	Yes, No, Partially ?
Force majeure clause in lease agreement ?	If so, can it be applied to the current circumstances ?
Is there an insurance covering operational losses ?	If so, is loss of rent covered ? For how long ? What about service charges and taxes ?
What is the financial situation of the landlord/tenant ?	Consider abuse of right & grace period issues  but also other schemes aimed at helping businesses (deferral of principal repayment under Febelfin charter for facility agreements, state guarantees, etc.)
What are the elements which can be used to negotiate ?	Lease term & break options, incentives, service charges & taxes, availability of lease guarantee, etc.  Consider the rigid character of the Retail Lease Act => notarial termination of agreement followed by the conclusion of a new lease agreement ?  Consider landlord's attention on the need to avoid precedents in terms of renegotiations

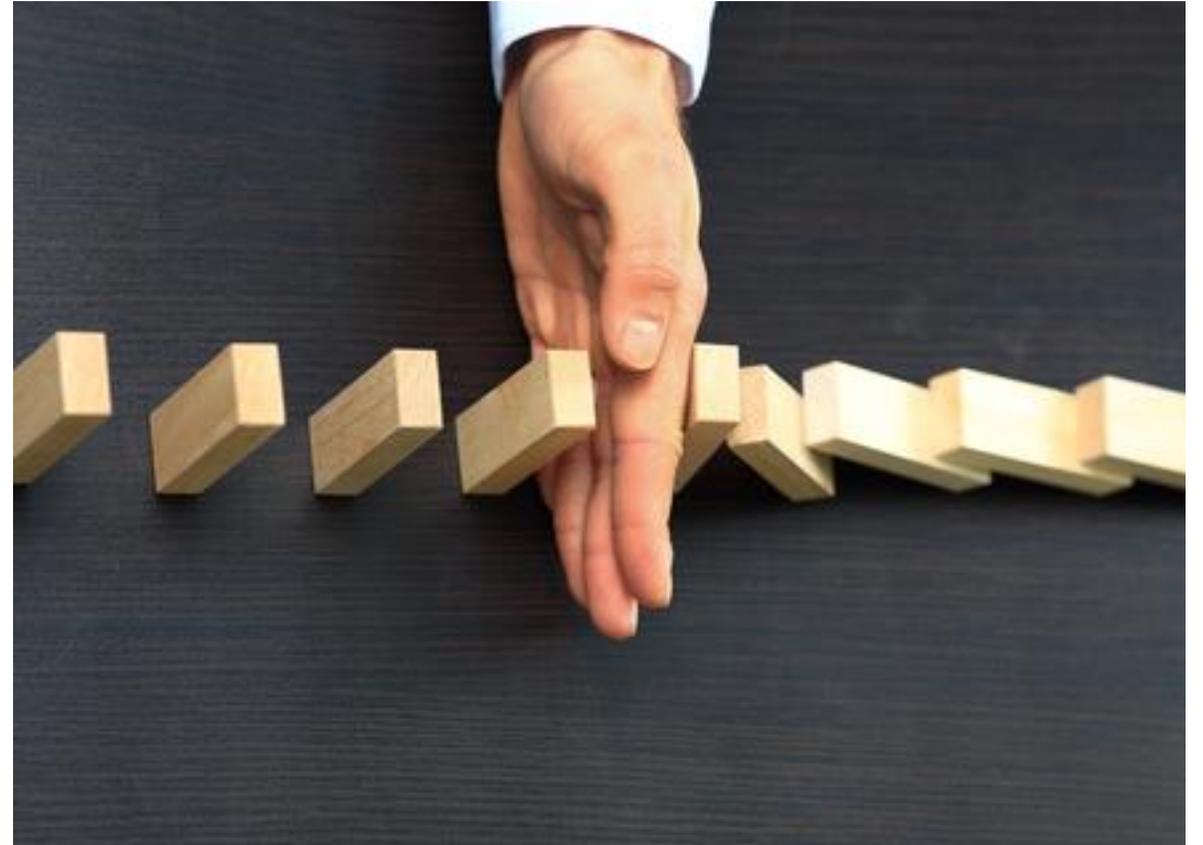
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# Impact COVID-19 on (retail) leases

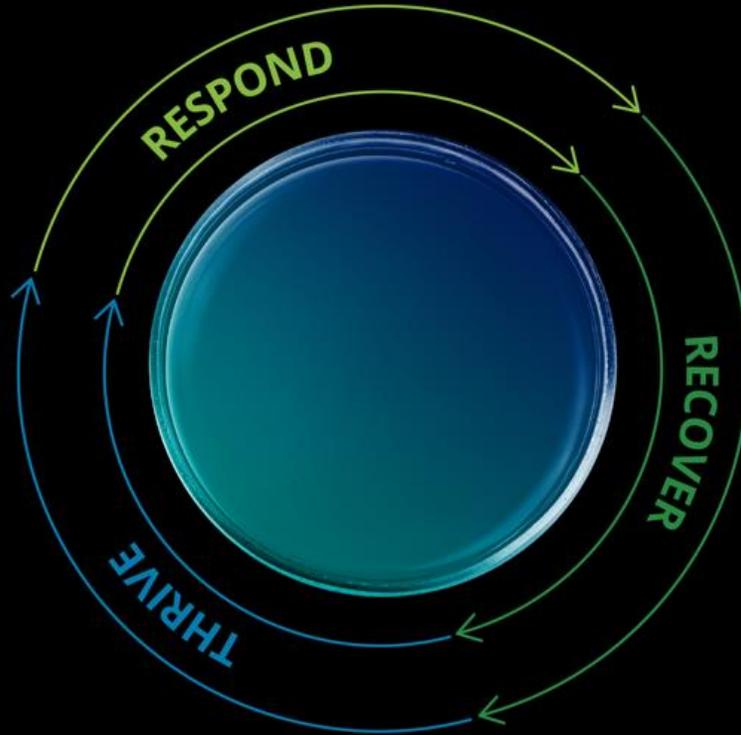
## Conclusion

- Unprecedented situation
- Legal grounds for **both parties**
- Competency of **lower jurisdiction** ("Vredegerecht"/"Justice de paix")
- Case-by-case analysis - **Negotiation** is the key
- Recommendation **BVS/UPSI**:

*Landlord encouraged to waive half of the rent for 2 months and grant payment deferral for the other half until the end of December 2020 at the latest. Service charges and taxes remain due.*



**Deloitte.**



**Thank you for attending!**