



AMENDED

Downtime compensation

Information on the new regulatory framework entering into force on **28 March 2020**

The outbreak of Covid-19 has significantly worsened the global financial situation and has adversely affected the daily work of companies, resulting in sudden and rapid changes in the labor market. Eversheds Sutherland Bitāns team is closely monitoring the changes of the laws and regulations in Latvia.

A detailed overview of the regulation on downtime compensation according to the Regulation of the Cabinet of Ministers of the Republic of Latvia No 165 of 26 March 2020, "Regulations on the employers affected by the crisis of Covid-19, which qualify for the downtime compensation and for the division of the payment of late tax payments in instalments or deferral for a time period of up to 3 years".

What is the downtime compensation?

According to the confirmation of the European Commission the downtime

compensation is not considered as a state aid, but a remedy of the State of Latvia to employers for the prevention of the economic consequences of Covid-19, if the employers at the same time:

- do not employ an employee due to the Covid-19 crisis, **or**
- fail to carry out the necessary activities to accept the fulfilment of employee's obligations due to the Covid-19 crisis.

What will be the amount of downtime compensation?

Article 74 of the Labor Law of the Republic of Latvia (Labor Law) stipulates that the employer must pay the employee the remuneration for the downtime. In accordance with Article 74(3), of the Labor Law, if the employee has a time salary, in the case of downtime, the employee shall be paid the specified remuneration. In contrast, if the employee has a piecework salary, the average earnings shall be paid to the employee. According to the law "On national risk and prevention and management measures in relation to the spread of Covid-19" in case of receipt of the downtime compensation the employer may not apply Article 74 of the Labor Law. Consequently, if an employee has been granted a downtime compensation, the employer has the right to disregard Article 74 of the Labor Law and has the right not to disburse the salary for the downtime period. Otherwise, **the employer has no right not to disburse the salary to the employee.**

Downtime compensation will be determined, based on the data submitted by the employer regarding the employee to the State Revenue Service (SRS) within the last 6 months prior to the announcement of the emergency situation, **75% of the average gross remuneration amount of the previous 6 months or according to the data actually declared about the employee in the last 6 months, but not exceeding 700 euros** per calendar month.

Who can apply?

Those employers affected by the crisis of Covid-19 will be able to apply for the downtime compensation if:

- | their revenue from the economic activity in March or April 2020 has decreased by **at least 30%**, compared to the corresponding month of 2019, as a result of the outbreak of Covid-19,
- | their revenue from the economic activity in March or April 2020 has decreased by **20%**, compared to the corresponding month of 2019, as a result of the outbreak of Covid-19, and the employer affected by the crisis of Covid-19 meets at least one of the following criteria:
 - export in 2019 represent 10% of the total turnover or is not less than 500 000 EUR
 - the average monthly gross salary paid in 2019 is not less than 800 EUR
 - long-term investments in fixed assets as at 31 December 2019 are at least 500 000 EUR.

Which employers affected by the crisis of Covid-19 will not be supported?

Please pay attention that the downtime compensation is not planned to be granted to **members of the Management Board and Supervisory Board** of the employers affected by the crisis of Covid-19, as well as to the employees who are simultaneously employed in a State or local government institution or capital company of a public person or **who receive an old-age or service pension or carry out economic activity.**

The downtime compensation is not intended to be paid to employees who are employed by such employers affected by the Covid-19 crisis:

- | who have not submitted all tax returns and annual reports to SRS for the last 12 months prior to the emergency situation

COVID-19

Changes in the laws and regulations

27 March 2020

- | to whom the tax debt on 7 March 2020 was more than 150 EUR and to whom no extension of payments has been granted or no agreements have been entered into regarding voluntary tax payment
- | who in the previous 6 months prior to the announcement of the emergency situation have calculated the taxes administered by SRS on average less than 200 EUR per month
- | who are excluded or have been excluded during the last 2 years from the SRS value added tax payers register or whose economic activity is or has been suspended
- | who has ongoing insolvency proceedings on the date of the decision
- | who have not specified in the application to SRS regards downtime compensation the justification regarding the occurrence of employees downtime due to the circumstances caused by the employer as a result of Covid-19
- | for which SRS, when assessing the application for downtime compensation, finds that the occurrence of the employee's downtime period is not related to the circumstances caused by Covid-19
- | who commence employment relationships with the employee after 1 March 2020
- | who are institutions financed by the State and local government budget or a merchant controlled by them
- | whose staff have been leased to another taxpayer
- | those, in respect to whom, during the previous 3 years and at the time of the assessment of the application for downtime compensation, the tax audit (audit) or data compliance has resulted in an additional amount to be paid in the State budget, or reduced the amount of the unduly increased tax to be repaid from the State budget, including late payment charges and fines, the total amount of which exceeds 3% of the employer's tax revenues administered by SRS in the relevant year (minus the overpayments paid by the tax authorities from the contributions made by employers), but at the time of the assessment – 3% of the employer's tax revenues administered by SRS in the previous year (minus the overpayments paid by the tax authorities from the contributions made by employers)
- | who, or whose member of the Management board has been punished in the previous year and at the time of the evaluation of the application for an infringement relating to the employer's tax obligations, infringements in the customs field, or a violation of the regulatory enactments regulating the legal employment relationship, except where a warning or a fine not exceeding 151 EUR has been applied for an individual violation and during a year of penalties the total amount does not exceed 500 EUR.

Benefits of the in-depth cooperation program

To the employers affected by the crisis of Covid-19, who are included in the in-depth cooperation program pursuant to Regulation of the Cabinet of Ministers of the Republic of Latvia No 748 of 27 November 2018, "Regulations for the operation of the in-depth cooperation program", SRS does not apply the following restrictions on the granting of downtime compensation:

- | the employer affected by the crisis of Covid-19 has not submitted to the SRS all tax returns and annual accounts for the last 12 months prior to the emergency situation

COVID-19

Changes in the laws and regulations

27 March 2020

- the employer affected by the crisis of Covid-19 on 7 March 2020, has a tax debt of more than 150 EUR and has not been granted an extension or no agreement on voluntary taxation has been concluded

What period will be covered?

The downtime compensation will be granted and paid in accordance with the downtime period indicated in the submission by the employer affected by the crisis of Covid-19, for a period from 14 March 2020 to 14 May 2020, but not longer than until the end of the period of validity of the Cabinet of Ministers decision regarding emergency situation (downtime period).

Employees will not receive any downtime compensation for the calendar days for which sickness benefit has been granted.

When and how to apply?

The application for downtime compensation for the downtime period from 14 March 2020 to 31 March 2020 will be open until 25 April 2020. For further periods of downtime, the employers will have to submit new applications by the 25th date of each month.

The employers affected by the crisis of Covid-19 by filling in the form "Application for idle benefit" in the electronic declaration system of SRS (EDS), have to indicate:

- name of the employer
- tax payer's registration number of the employer
- taxation period indicating the year and month and the turnover for the period
- downtime period
- type of the main activity of the employer (according to the NACE Rev. 2 classification)
- justification for the occurrence of employee downtime in relation to conditions created to the employer by the occurrence of Covid-19
- name and surname of the employee in the downtime
- personal number of the employee
- employee's account number opened in a credit institution or at the payment service provider in Latvia
- downtime period of the employee
- a proof that the employee to whom downtime compensation is requested:
 - is not in the period of incapacity for work;
 - within one month of the date of submission, the dismissal of the employee upon the initiative of the employer will not be performed, and;
 - has not been leased to another taxpayer

Importantly

If after the granting of the downtime compensation, the employer submits to the SRS specified data on the employee's employment income during the period that is used to calculate the amount of the downtime compensation, the downtime compensation will not be re-calculated!



COVID-19

Changes in the laws and regulations

27 March 2020

Procedures for Evaluation and Notification of Submission

The employer's application submitted to the EDS regarding the downtime compensation will be reviewed by SRS within 5 working days.

If an employee is employed by a number of employers, the downtime compensation shall be granted taking into account which of the employer affected by the crisis of Covid-19 is the primary source of income (tax book submitted). If the tax book has not been submitted to any employer, the downtime compensation shall be paid, taking into account which of the employers has applied for the downtime compensation first.

The list of employers affected by the crisis of Covid-19 whose employees have received downtime compensation will be published on SRS website.

When and how it will be paid?

The SRS will pay the requested downtime compensation for one calendar month to the employee's bank account or to payment service providers in Latvia specified in the employer's application within 5 working days from receipt of the application for downtime compensation.

The SRS will inform the employer about the cost of downtime compensation on EDS. Thus, the employer will have to inform the employee about the downtime compensation.

Is the downtime compensation taxable?

The downtime compensation will not be subject to personal income tax and mandatory national social security contributions. The SRS will inform the State Social Insurance Agency about persons who have been granted downtime compensation.

Reimbursement of downtime compensation

The payment of the downtime compensation will be terminated and the employer will be obliged to voluntarily repay all of the downtime compensation granted if:

- | at the time of receipt of the downtime compensation, the employer will hire new employees
- | downtime compensation has been requested or received unduly
- | the employer interrupts downtime due to restoration of activities.

If there is no voluntary repayment of the downtime compensation SRS will recover the granted downtime compensation by applying the provisions of the Law on Taxes and Duties.

For more information please contact:



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