

# RECOMMENDATIONS FOR MORE LIQUIDITY AND FISCAL FLEXIBILITY DURING THE COVID-19 PANDEMIC

As of 21 April 2020




A Q&A guide to concrete actions to obtain liquidity support and tax relief  
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## THE PACKAGE OF MEASURES ...

... adopted by the Federal Government to cushion the effects of the corona virus is intended to act as a protective shield for employees and companies. This protective shield is based on four pillars. Pillar number two ("fiscal liquidity support for companies") is intended to improve the liquidity of companies through fiscal aid measures.

This Q&A guide is intended to support initial rapid assessments regarding the applicability of tax relief measures. It serves as an overview and contains direct starting points and generally applicable specific recommendations for action to increase liquidity and flexibility from a tax perspective. The assessment of the enforceability of tax relief measures is supported by the following traffic light system:

- |   |  |   |   |
|---|--|---|---|
|  <b>No relief</b><br><i>Raise attention; danger of liquidity loss. No support from the tax office</i> |  <b>Feasible under certain conditions</b><br><i>Keep in mind in case this event happens. Tax office hesitant.</i> |  <b>Easily feasible</b><br><i>Measure to be considered. Tax office generally supportive.</i> |  <b>Information</b><br><i>For information purposes only.</i> |
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### Q&A Guidelines

#### Q: Who is eligible for emergency tax relief or liquidity measures?

Tax relief measures

**A:** Evidence of taxable entities directly and significantly affected. The Federal Ministry of Finance (*Bundesministerium der Finanzen* - "**BMF**") has not specified what conditions must be met. The German Institute of Public Auditors (*Institut der Wirtschaftsprüfer* - "**IDW**") assumes that this includes at least those taxpayers who have been subjected to a state-imposed measure (such as closure of a business or ban on activities under the German Infection Protection Act (*Infektionsschutzgesetz* - "**IfSG**"). It is currently unclear whether entrepreneurs whose economic losses are due to the financial difficulties of their business partners are to be regarded as only indirectly affected and thus would not be granted access to tax relief..



The IDW strongly criticises the limitation to those directly affected and demands that liquidity assistance be made available to all taxpayers, including those indirectly affected. A deletion of the

term "directly" is recommended. In the same way, the wording "not inconsiderably affected" is criticised, as the BMF initially did not provide any information on what is meant by this. According to the IDW, a declaration by the taxpayer should be sufficient to show that the company belongs to the industry affected by a closure or has business relations with companies in this industry.

The BMF essentially assumes (as of 17 April 2020) that in principle *"a very large number of sectors and persons are significantly affected by the impact of the corona crisis"*. The tax authorities would be satisfied with plausible information from which serious negative effects of the Corona crisis on the economic situation could be deduced. However, the BMF still has not commented on immediacy.

**Q: What could make it easier for the tax authorities to classify the effects on my company as as immediate and increase my chances of receiving liquidity support?**

**A:** It is important to document the financial impact of the corona virus on the company as accurately as possible. We recommend regular, daily documentation. This documentation should be enclosed with the respective applications.

Da Since the extent of the (long-term) effects on the economy caused by the corona virus can only be estimated to a limited extent at present, we consider regular and detailed documentation to be absolutely essential in order to be able to benefit from any future instant aid, liquidity assistance and tax measures.



**Q: Are there standard application forms for tax relief during the Corona crisis?**

**A:** Most state tax authorities have made available on their websites a standard application form for interest-free deferral and reduction of tax prepayments or the tax assessment amount for the purposes of trade tax prepayments. You can download the form in the table cell on the right (only in the Word version).



**Q: I cannot pay all tax amounts due/becoming due immediately. What can I do?**

**A:** You can file an application for tax deferral for income, corporation, church and value-added tax and with regard to the solidarity surcharge with an application to waive deferral interest. Financial effects of the corona virus on the company must be documented in as much detail as possible and this documentation must be enclosed with the application for a tax deferral. This helps in particular to differentiate between direct and indirect effects. According to the BMF, a connection to the Corona crisis must be recognisable for the deferral to be granted. The deferral is generally granted for a period of three months without specifying a deferral period.

If taxable entities intend to defer VAT for the current pre-notification period or future pre-notification periods, the deferral request should be submitted in good time before the due date (ideally when the pre-notification is submitted). This serves to avoid late payment surcharges.



**Q: The fixed tax advance payments no longer correspond to the actual income situation - I pay too much. What can I do?**

**A:** In this respect, you can submit a request for an adjustment of the advance payments of income taxes. The corresponding application should be sent electronically (via ELSTER) to the tax authorities to speed up the processing of the application. According to the BMF, it must be recognisable that, due to falling sales, profits from the Corona crisis are significantly lower than previously assumed.

Applications for a reduction of the trade tax base for the purpose of advance payments can be submitted by 31.12.2020, stating the circumstances, and are generally to be addressed to the municipalities. The tax office is only the addressee if the assessment and collection of trade tax has not been transferred to the municipality.

If you have already made advance payments for the assessment period 2020, the reduction may lead to a refund of advance payments already made.



**Q: I have received a foreclosure notice from the tax authorities. How to proceed?**

**A:** The tax office must now be informed that you, as the enforcement debtor, are directly and not insignificantly affected. It is essential that this be documented by proving the financial situation of the company. The tax authorities may refrain from enforcement measures until 31 December 2020 in the case of taxes in arrears or taxes due up to this date.

For enforcement measures that have already been taken, we recommend that you apply for a suspension of enforcement. According to the BMF, the application will be approved by the tax authorities by 31 December 2020 at the latest.



**Q: To what extent are the General Customs Administration and the Federal Central Tax Office accommodating?**

**A:** In the case of the taxes regulated by federal law and administered by the customs administration (e.g. import turnover tax, energy tax and air traffic tax), the main customs offices have been instructed to grant taxpayers appropriate relief in order to avoid unreasonable hardship. As explained above, this includes (i) deferral of payment; (ii) suspension of enforcement; and (iii) adjustment of advance payments that may be granted upon application or notification. The same applies to the Federal Central Tax Office, which is responsible, amongst others, for insurance tax and should proceed accordingly.



**Q: What other relief is available with regard to VAT?**

**A:** Several German federal states have announced that special advance payments for the permanent extension of the VAT deadline will be reduced to EUR 0.00 for companies affected by the crisis upon application and that special advance payments already transferred will be refunded at short notice upon informal application. In other words, if your application for a permanent deadline extension of the VAT advance pre-notification has been approved and you have thus been obliged by the tax office to make the special advance payment, you can have this special advance payment refunded or, if not yet made, reduced to EUR 0.00 (the permanent extension remains in force).



**Q: I am a landlord (subject to VAT) and have agreed with my tenants to defer the payment of rent. Do I still have to make advance payments of VAT to the tax office in the full (original) amount?**






**A:** If your VAT liability is (as an exception) calculated on the basis of collected fees ("*actual taxation*") according to Sec. 20 German VAT Act (*Umsatzsteuergesetz* – "**UstG**"), the VAT does not become due until the end of the pre-notification period in which the fees were collected (Sec. 13 (1) no. 1(a) UStG). In this case, thus, the turnover tax is payable at a later date (after expiry of the deferral) when the tenant pays the deferred rent. Therefore, you do not have an additional sales tax burden due to the deferral of rent payments.

The situation is different if your VAT liability is calculated on the basis of agreed charges (Sec. 16 (1) sentence 1 UStG – "*debit taxation*"). This is due to the fact that in this case the VAT arises at the end of the pre-notification period in which the services were performed (Sec. 13 para. 1 no. 1(a) UStG). As a result, you have no cash flow receipts, but nevertheless cash flow issues for sales tax purposes.

Since the tax relief measures with regard to the adjustments of advance payments have so far only covered income tax (i.e. income, corporation and trade tax), we recommend that you apply for a deferral with regard to VAT, as described above, and waive interest on the deferral. If this is granted, the VAT liability will be postponed to a later date despite the application of debit taxation - just like your rental income.

Furthermore, the German Taxpayers' Association has demanded to facilitate access to the actual taxation of regarding VAT and to extend as far as permitted under European law. A reaction from the Federal Government is currently pending.



	<p><b>Q: Are there reliefs with regard to land transfer, inheritance and gift tax?</b></p> <p><b>A:</b> It depends on the federal state. In Bavaria and North Rhine-Westphalia, for example, it is possible to apply for an interest-free deferral of the real estate transfer tax for acquisition transactions carried out between 1 January and 30 April 2020 and for transactions for which the tax arises during this period until 31 December 2020 at the latest. With regard to inheritance and gift tax, an application for interest-free deferral of up to three months can be submitted in both federal states.</p>	
	<p><b>Q: Are wage tax deferrals envisaged?</b></p> <p><b>A:</b> At present it is not possible for employers to defer wage tax.</p> <p>With regard to income tax matters, we recommend that you contact the tax office and individually agree a postponement of the payment. As mentioned several times, the tax offices have been instructed to be cooperative. Employers in Bavaria and North Rhine-Westphalia who are affected can already apply for a two-month extension of the deadline for wage tax notifications to be submitted by 10 April, 2020.</p>	
	<p><b>Q: Can I request a deferral of social security contributions?</b></p> <p><b>A:</b> Essentially, the German Federal Umbrella Association of Health Insurance Funds (<i>Spitzenverband Bund der Krankenkassen</i> - "GKV") has clarified that the contributions due can initially be deferred for the months March 2020 to April 2020. This means that deferrals are initially granted at the latest until the due date of the contributions for the month of May 2020. However, before an application for deferral is approved (to be submitted to the responsible health insurance fund), short-time work benefits and other support and assistance measures must be claimed first. These include in particular subsidies and loans issued with the cooperation of the German Federal Ministry of Economics and Technology (<i>Bundesministerium für Wirtschaft und Technologie</i> - "BMWi") and the BMF.</p>	
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>General taxation</b></p>	<p><b>Q: Can I expect any deadline extensions due to the COVID-19 pandemic?</b></p> <p><b>A:</b> As things stand at present, there is no provision for any easing of deadlines for submission and participation (some exceptions at state level) - the deadline for submission for the 2019 calendar year (without participation of those authorised to advise) is still 31 July 2020. If you are unable to meet the deadline, we recommend that you submit an application for an extension. The tax authorities are instructed to make a generous decision. According to official information from the BMF, late submission of tax returns should, until further notice, generally be exempt from late surcharges.</p>	
	<p><b>Q: Do I have to pay tax on subsidies (for self-employed persons or small businesses) from the emergency programme?</b></p>	
	<p><b>A:</b> The emergency aid will initially benefit you in full; this year it will not be taken into account in tax prepayments. However, since the grants from the emergency programme are generally taxable, they must be declared in the tax return for 2020 and will be taxed at your individual tax rate.</p>	



## Important note/ Special cases

*There are differences specific to each federal state. NRW allows, for example, on application, payment term extensions for real estate transfer tax and interest-free deferrals for inheritance and gift tax as well as real estate transfer tax. For example, the State of Hesse, amongst others, grants a general deadline extension until 30 April, 2020 for annual tax returns in 2018 for all cases where tax advice is required. In addition, the tax offices in Hesse can be asked individually to waive late fees.*

*The events surrounding the corona virus are dynamic, and any changes and extensions to the tax relief measures are possible at any time. We monitor developments and adjust our recommendations and key Q&A accordingly. The present Q&A guidelines reflect the above-mentioned status and focus on generally applicable (at federal state level) and essential questions for initial assessment purposes and on selected immediately executable aid measures. We would be pleased to undertake a case-by-case review and individual consultation for you, taking into account your personal overall circumstances.*

### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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