

# Application for German tax relief to mitigate the impact of the Coronavirus crisis

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March 24, 2020 (last updated on September 22, 2021)

In the course of the Coronavirus crisis, the federal and state governments have adopted extensive tax measures to minimize the damage to the German economy, which have been published in a letter from the Federal Ministry of Finance (BMF) on March 19, 2020<sup>1</sup> and have lastly been amended on March 18, 2021<sup>2</sup>. In summary, the BMF letter provides for several measures to enable taxpayers to ensure the liquidity of their company with as little red tape as possible:

## A. Deferrals

Taxpayers may submit applications for deferral of tax debts due in respect of income, corporation and value added tax or for remission of deferral interest until June 30, 2021 for taxes already due or due to be paid by June 30, 2021. Applications can be submitted informally or in the form of simplified forms from the state tax authorities.<sup>3</sup> However, the deferral relief does not apply in particular to wage tax, capital gains tax and construction deduction tax pursuant to Section 48 German Income Tax Act (“ITA”).

The decisive factor is that the applying company must be able to prove that it is directly and significantly affected by the Coronavirus crisis. This fact must also have direct consequences for the company’s current inability to pay taxes due. A payment when due must cause significantly greater disadvantages for the tax debtor than for those who have to pay tax debts in a "merely" tense financial situation. Therefore, merely crisis-related payment difficulties alone are generally not sufficient for the tax authority to grant a deferral. However, the legislator allows a wide scope appropriate to the special situation: although the company has to demonstrate how directly affected it is by the Coronavirus crisis, it is not required to state exactly how great the disadvantages (losses) will be in detail. Rather, the tax authorities are satisfied with plausible statements by the taxpayer that the Coronavirus crisis has serious negative effects on their financial situation.

Furthermore, another condition for granting a deferral has apparently been dropped: Normally Section 222 German Fiscal Code (“GFC”) provides that, apart from the existence of the considerable hardship (financial impact of the Coronavirus crisis), the future claim of the tax authorities is also not endangered by the deferral and thus can be realized at least at a later point in time. Here it is obviously expected that this characteristic either must no longer be examined or should be handled generously in any case, since it is intended – as a rule – to waive at least the otherwise usual deferral interest. According to the tax authorities, security deposits for the deferral can usually be dispensed with.

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<sup>1</sup> Available [here](#).

<sup>2</sup> Available [here](#).

<sup>3</sup> Available [here](#).

The relief in the justification of the application concerns taxes due by June 30, 2021. The deferrals are to be granted until September 30, 2021 at the latest. Any subsequent deferrals beyond this date for taxes due by June 30, 2021 may only be granted in connection with an appropriate rates payment agreement lasting no longer than December 31, 2021.<sup>4</sup>

## B. Reductions

Taxpayers may also apply for the adjustment of advance payments of income and corporation tax on request. Just as for deferrals, the companies applying must prove that they are directly and considerably impacted by the Coronavirus crisis. The burden of proof lies once again with the applicant, whereby it is sufficient for him to provide credible evidence of the circumstances leading to the application to reduce advance payments. Although the company generally still has to provide evidence that it is likely to generate a lower profit in the current year than in the last assessment period, it is not necessary to present interim balance sheets or annual projections. For this reason – as in the case of deferral – applications must not be rejected because the taxpayers are unable to prove the value of the losses incurred in detail.

In addition, on January 25, 2021 "Identical decrees" have been issued by the highest tax authorities of the federal states on trade tax measures taking account of the impacts of the Coronavirus<sup>5</sup>. In accordance with the above-mentioned explanations, the advance payments on trade tax prepayments can also be simplified and reduced upon application until December 31, 2021.

## C. Enforcement

Furthermore, the tax authorities will refrain from enforcement measures until September 30, 2021 regarding taxes due by June 30, 2021. In these cases, they will waive any penalties for delayed tax payments or tax payments becoming due between January 1, 2021 and September 30, 2021. If an appropriate rates payment has been agreed upon, an extension of the enforcement deferral for the taxes due by June 30, 2021 is possible until December 31, 2021 at the latest, including the waiver of the penalties for delayed tax payments incurred to that date.

However, this should not tempt taxpayers to simply submit such applications, e.g. reduction of advance payments to zero, without their own prior liquidity forecast. This is because the "application forms for tax relief due to the impacts of the Coronavirus" published by the tax authorities in the meantime contain the following addition in brackets at the end: "(Note: Incorrect information may have criminal consequences, cf. sanction provisions Sections 370 and 378 GFC)".

Thus, if companies were to apply for a deferral, though they could still easily pay the taxes due, the information they provided would be incorrect, as the required reason for the deferral is missing. A reference to the crisis alone is not sufficient. The same applies to the application for a reduction if companies are not hit by the crisis at all or just to a minor or obviously to a lower extent than applied

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<sup>4</sup> Available [here](#).

<sup>5</sup> Available [here](#).

for. This is because the reference that "applications (...) are not (to be) rejected because the taxpayers cannot prove the value of the damages incurred in detail" only concerns the legal test, but not the question whether the material preconditions for a deferral or reduction are prevailing at all.

The tax authorities thus make it clear that taxpayers who deliberately or recklessly provide false information must, as in the past, expect to be prosecuted for tax fraud or reckless tax reduction.

## D. Repayment of special VAT payments in 2020 and 2021

In addition to the tax relief provided by the BMF letter, the federal states have introduced the possibility of partial or full reimbursement of the special advance payment of VAT already paid for 2020 and 2021. This requires that the companies are directly and significantly affected by the Coronavirus crisis. It should be emphasized that, according to the tax authorities, such an application should have no effect on a permanent extension granted, which should remain unchanged.

Currently there is no nationally uniformly prescribed procedure as to how to apply for a refund or reduction of the special VAT advance payments. Therefore, taxpayers should take a close look at the respective decrees of the individual federal states<sup>6</sup> with regard to the requirements before submitting an application. Some federal states<sup>7</sup> recommend that entrepreneurs use the familiar form "Application for permanent extension - notification of the special advance payment" (USt 1 H) to ensure that the application is processed quickly. This application can be prepared with ELSTER and submitted to the tax office. Line 22 must be filled in with a "1" and line 24 with a "0", and the entry in line 24 with a "0" will result in a full refund of the special advance payment.

## E. Advance notifications of income tax and VAT

After the federal states of North Rhine-Westphalia and Bavaria had already decided to extend the deadline for the **submission of income tax returns**<sup>8</sup>, the Federal Ministry of Finance, in agreement with the supreme tax authorities of the states, has now followed suit with a BMF letter dated April 23, 2020 (IV A 3 - S 0261/20/10001 :005)<sup>9</sup>. According to this letter, employers can extend the deadlines for submitting monthly or quarterly wage tax returns during the Coronavirus crisis in individual cases upon request. The prerequisite is that the employers themselves or the person responsible for payroll accounting and wage tax registration are verifiably prevented through no fault of their own from submitting the wage tax registration on time. The extension of the deadline must not exceed two months.

Bavaria and Hesse also offer the possibility of extending the deadline for submitting certain **advance VAT returns**<sup>10</sup>. Upon request, Bavaria will grant an extension of up to two months<sup>11</sup> for the

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<sup>6</sup> [Baden-Württemberg](#), [Bavaria](#), [Berlin](#), [Brandenburg](#), [Bremen](#), [Hamburg](#): currently no official link available, [Hesse](#), [Mecklenburg-Western Pomerania](#), [Lower Saxony](#), [North Rhine-Westphalia](#), [Rhineland-Palatinate](#), [Saarland](#), [Saxony](#), [Saxony-Anhalt](#), [Schleswig-Holstein](#), [Thuringia](#).

<sup>7</sup> North Rhine-Westphalia, Bavaria, Baden-Württemberg.

<sup>8</sup> [North Rhine-Westphalia](#), [Bavaria](#).

<sup>9</sup> Available [here](#).

<sup>10</sup> Available [here](#).

<sup>11</sup> Available [here](#).

submission of the advance VAT return, which is to be submitted by the end of April 10, 2020. In Hesse, the deadline for submission and payment of the advance VAT returns to be submitted by April 10, 2020 and May 10, 2020 will be extended by two months in each case upon request. The two-month extension of the deadline for submission and payment applies equally to taxpayers with a so-called permanent deadline extension (thus already for the advance return for VAT February 2020) and to taxpayers for whom the advance return period is the calendar quarter. The extension of the deadline for submission and payment is effective as soon as the application is submitted to the tax office, provided the taxpayer is directly and significantly affected by the Coronavirus crisis.<sup>12</sup>

## F. Simplification of loss offsetting

In a BMF letter dated April 24, 2020 (IV C 8 - S 2225/20/10003 :010)<sup>13</sup>, the Federal Ministry of Finance, in agreement with the supreme tax authorities of the Länder, took the following measure with regard to the reduction of advance payments for income and corporation tax (including surcharge taxes such as the solidarity surcharge or church tax). The measure applies regardless of whether the shops remain closed or have already been reopened.

Taxpayers with profit and rental income who are directly and not inconsiderably negatively affected by the Coronavirus crisis can apply (within the usual time limits regarding advance payments) for a subsequent reduction of advance payments for income or corporation tax for 2019 on the basis of a lump-sum loss carryback. It is automatically assumed to be affected if the advance payments for 2020 have already been reduced to EUR 0. The tax authorities could adjust the advance payments for 2019 on the basis of the lump-sum loss carryback until March 21, 2021 at the latest.<sup>14</sup> According to the BMF letter, the possibility of presenting a higher loss that can be carried back in individual cases by submitting detailed documentation is expressly retained. The measure applies regardless of whether the shops remain closed or have already been reopened.

The application can be made in writing or electronically (e.g. by means of ELSTER software) to the tax office responsible for determining income or corporation tax. It is also possible to submit the application for a reduction in advance payments in a lump sum procedure at the same time as the application for a reduction in advance payments for 2020.

The lump sum loss carryback from 2020 amounts to 30% of the relevant income on which the advance payments for 2019 were based (max. EUR10m or EUR 20m in the case of joint taxation). On this basis, the advance payments for 2019 will be recalculated. Any overpayment will be reimbursed.

The lump sum system adopted removes the need for the administration and taxpayers to provide the proof that is usually required and involves a great deal of effort.

Since a loss carryback from 2020 can only be taken into account in the assessment for 2019 after the assessment for 2020 has been carried out, the first assessment for 2019 in 2020 may result in a subsequent payment for the taxpayer because a loss carryback 2020 is not taken into account. The tax office will defer such an additional payment interest-free until one month after announcement of the income tax assessment for 2020, subject to the determination of interest and subject

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<sup>12</sup> Available [here](#).

<sup>13</sup> Available [here](#).

<sup>14</sup> If the income from agriculture and forestry is expected to predominate, an adjustment of the advance payments for 2019 is possible no later than November 30, 2021.

to revocation. If, on the other hand, the first assessment for 2020 is based on an estimate of the tax base, deferral interest must be set retroactively for the deferral period. Regarding a provisional loss carryback for the calendar year 2021 in the tax assessment for the calendar year 2020, we refer here to the draft of a Third Coronavirus Tax Aid Act under paragraph J.

If the income or corporation tax assessment for 2020 results in a loss carryback, the previously determined and deferred subsequent payment for 2019 is no longer applicable. In the case that the assessment for 2020 does conversely not result in a loss carryback, the deferred subsequent payment for 2019 has to be made within one month of the announcement of the tax assessment for 2020.

### Simplified example to illustrate the measure:

Company A has made advance payments of EUR 16,000 for corporation tax for the year 2019. The expected profit for 2019 is EUR 100,000. Advance payments of EUR 6,000 per quarter have been set for 2020. A made the payment for the first quarter of 2020 on the statutory due date (March 10, 2020).

Due to the COVID-19 crisis, sales slumped from A to EUR 0, while fixed costs remained unchanged. A applies to the tax office for a reduction of his advance payments for 2020 to EUR 0, explaining his financial circumstances. The tax office reduces the quarterly advance payment by EUR 6,000 (i.e. to zero).

In addition, A applies for the (retroactive) reduction of the advance payments for 2019 in a lump sum procedure in view of the expected loss for 2020. The tax office reduces the advance payments for 2019 on the basis of lump sum loss carryback from 2020 of EUR 15,000 (15% of EUR 100,000) to EUR 13,000 on the basis of a lump sum loss carryback. The tax office reimburses the overpayment of EUR 3,000.

As a result, A receives a total of EUR 9,000.

It is further possible to take into account a loss carryback in the annual tax assessment in accordance with the procedure described above for 2020. This requires that the advance payments for 2021 have been reduced to EUR 0.

We refer here to the draft of a second Act on the implementation of fiscal support measures to mitigate the Coronavirus crisis (Second Coronavirus Tax Aid Act under paragraph I and Third Coronavirus Tax Act under paragraph J).

## G. Practical note

We recommend that taxpayers expressly note possible uncertainties in the application regarding the conditions for deferrals, reductions and other tax measures in order to avoid accusations of intentional or reckless misrepresentation. Transparency is required here. If the taxpayer's situation improves significantly in the current year, a simple application for reversal of the tax relief granted can also be considered.

## H. First Coronavirus Tax Aid Act: Act on tax aids in the catering sector, employees in short-time work and amendment of the German Transformation Act

The Act passed by the German Bundestag on May 28, 2020<sup>15</sup>, provides among other things for the reduction of the VAT rate in the catering sector to the reduced tax rate of 7% from July 1, 2020, until June 30, 2021. The reduction of the VAT rate, except for the sale of beverages, was extended beyond June 30, 2021 by the Third Coronavirus Tax Aid Act<sup>16</sup> until December 31, 2022.

In addition, the First Coronavirus Tax Aid Act adjusts the deadlines in the German Transformation Act for the tax retroactive periods regulated there from eight to twelve months in line with the extensions already made in the German Transformation Act, in order to ensure synchronicity of deadlines.

The First Coronavirus Tax Aid Act also provided for tax support for employees working short time. Employers' short-time working grants, which compensate up to 80% of the difference between the usual and the actual remuneration for the months March to December 2020, have been exempted from wage tax.

In a BMF letter dated May 26, 2020<sup>17</sup>, the tax authority had added that tax-privileged corporations can increase the short-time benefits for their own employees working short-time by using their own funds up to a total of 80% of their previous earnings, without examining the use of funds for statutory purposes, market conformity and appropriateness. The increase must, however, be granted consistently for all employees. The "previous earnings" are the average net monthly salary paid in the three months prior to the introduction of short-time work. Any increase to more than 80% of the previous earning requires a corresponding justification, in particular with regard to market conformity and appropriateness. Collective agreements can serve as a justification. In this case, the submission of the agreement or a model employment agreement provides sufficient evidence. The provisions originally agreed until December 31, 2020 have been extended until December 31, 2021 by a BMF letter<sup>18</sup>.

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<sup>15</sup> Available [here](#).

<sup>16</sup> Available [here](#).

<sup>17</sup> Available [here](#).

<sup>18</sup> Available [here](#).



# I. Second Act on the implementation of fiscal support measures to mitigate the Coronavirus crisis (Second Coronavirus Tax Aid Act)

On June 12, 2020, the Federal Government drafted a bill with further tax relief measures (Second Coronavirus Tax Aid Act)<sup>19</sup> containing, among other things, the following measures:

- Temporary reduction of the VAT rate from 19% to 16% and from 7% to 5% from July 1, 2020, to December 31, 2020. An enclosed BMF letter<sup>20</sup> regarding the impacts on individual cases is available.
- The payment of the German import VAT has been deferred to the 26th of the second month following the import.
- A one-time child bonus of EUR 300 per child entitled to child benefit for the calendar year 2020 (taking into account the tax relief provided by the tax-free child benefit).
- The tax loss carryback has been extended for the years 2020 and 2021 to a maximum of EUR 5m and EUR 10m (in the case of joint assessment) respectively, and a so-called Coronavirus reserve has been introduced in order to make the loss carryback for 2020 financially effective immediately when declaring taxes for 2019. The Third Coronavirus Tax Aid Act (under paragraph J) further extends the tax loss carrybacks for 2020 and 2021, increasing them to a maximum of EUR 10m and EUR 20m (in the case of joint assessment), respectively. This also applies to the amount limits for the provisional loss carryback for 2020.
- Introduction of a degressive depreciation by a factor of 2.5 compared to the currently applicable depreciation rate and a maximum of 25% per year for fixed assets in the tax years 2020 and 2021.
- For taxation of the private use of company cars that have no carbon dioxide emissions per kilometer driven, the maximum gross list price has been increased from EUR 40,000 to EUR 60,000.
- Temporary extension of the reinvestment periods under Section 6b ITA by one year.<sup>21</sup>
- Extension of the deadlines ending in 2020 for the use of investment deductions under Section 7g ITA by one year.
- For trade tax, the tax-free allowance for certain add-back criteria has been increased from EUR 100,000 to EUR 200,000.

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<sup>19</sup> Available [here](#).

<sup>20</sup> Available [here](#).

<sup>21</sup> See also BMF letter dated January 13, 2021; Available [here](#).

- The reduction factor in Section 35 ITA has been raised from 3.8 to 4.0, up to a trade tax multiplier of 420%, so that in some cases business owners have been fully relieved of trade tax through the tax reduction.
- Changes to the statute of limitations for criminal tax offences, so that in cases of tax evasion, despite the expiration of the tax claim, the confiscation of crime proceeds can be ordered. The limitation period for prosecution has been extended to two and a half times the statutory limitation period.

Furthermore, the following points are mentioned in the key issues paper of the stimulus package<sup>22</sup>, which have not yet been included in the draft bill:

- Possibility for partnerships to opt for corporate income tax.
- Improvement of participation opportunities for employees in their companies.
- From January 1, 2020 onwards the vehicle tax for passenger cars will be more strongly oriented towards CO2 emissions.

## J. Third Act on the implementation of fiscal support measures to mitigate the Coronavirus crisis (Third Coronavirus Tax Aid Act)

The Third Coronavirus Tax Aid Act<sup>23</sup> dated March 10, 2021 provides further tax aid measures. The Act contains – inter alia – the following measures:

- A one-time child bonus of EUR 150 per child entitled to child benefit for the calendar year 2021 (taking into account the tax relief provided by the tax-free child benefit).
- The extension of tax loss carrybacks for the years 2020 and 2021 from currently EUR 5m and EUR 10m to a maximum of EUR 10m and EUR 20m (in the case of joint assessment), respectively. This also applies to the maximum amounts for the preliminary loss carryback for 2020.
- The extension of the VAT rate reduction in the catering sector to the reduced tax rate of 7% until December 31, 2022.

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<sup>22</sup> Available [here](#).

<sup>23</sup> Available [here](#).



## K. BMF letter regarding the effects of the temporary VAT reduction

A BMF letter<sup>24</sup> dated November 4, 2020 amends the previous letter dated June 30, 2020<sup>25</sup> with regard to the effects of the temporary VAT reduction.

Regarding invoices for advance payments issued after June 30, 2020 and before January 1, 2021, for which the payment was received in this period, a VAT rate of 16% or 5% respectively is to be applied. In case the taxable service will be provided after 31 December, 2020, according to the BMF letter, German tax authorities should not object if a VAT rate of 19% or 7% is applied. The recipient of such an invoice is allowed to claim the respective input VAT, provided that the general requirements of an input VAT claim are fulfilled. In case the invoice is issued with a VAT rate of 16% or 5% and the respective service is provided after December 31, 2020, the BMF letter states that taxation at a VAT rate of 19% or 7% should apply – regardless of whether the invoice is issued with a lower tax rate. Provided that the general requirements of an input VAT claim are fulfilled, the recipient of the service is only allowed to claim the input VAT to the amount of the VAT in the invoice.

If an invoice for an advance payment has been issued before July 1, 2020 at the applicable VAT rate of 19% or 7% and the payment has been received after that date, the taxpayer should owe the additional tax rate. In this case, the recipient of the service is in principle (exception: BMF letter from June 30, 2020, n. 46<sup>26</sup>) not allowed to claim the input VAT to the amount of the entire 19% or 7%, as the difference to the reduced VAT is not a legally owed tax. Provided that the general requirements of an input VAT claim are fulfilled, the recipient of the service is only allowed to claim the input VAT to the amount of the applicable (reduced) VAT rate of 16% or 5%.

In addition, the BMF letter contains further regulations regarding, among others, the taxation of electricity, gas, water, refrigeration and heat supplies, special and compensatory payments for rental or leasing agreements as well as the time of service provided by an insolvency administrator.

## L. No setting up of a permanent establishment for expanded stays at building and plant works due to COVID-19

In its updated version of the "FAQ "Coronavirus" (taxes)"<sup>27</sup> of April 26, 2021, the Federal Ministry of Finance states that there should be no tax consequences for foreign companies and their employees with regard to the setting up of a permanent establishment if construction and assembly works by foreign (construction) companies are interrupted before completion. As a precondition, these interruptions must not be due to the course of business operations, but rather, for example, to border closures or cessation of work stemming from the Coronavirus crisis.

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<sup>24</sup> Available [here](#).

<sup>25</sup> Available [here](#).

<sup>26</sup> Available [here](#).

<sup>27</sup> Available [here](#).

Therefore, until further notice, interruptions in construction and assembly works caused by the Coronavirus crisis shall not be included in the calculation of the national and convention-based periods for justification for the setting up of a permanent establishment for construction and assembly works (suspension of periods). This additionally requires that:

- The interruption period in the specific case is at least two weeks;
- The workers or agents of the company are removed from the installation site or leave it during the interruption period;
- It can be ensured that the corresponding income is taxed, for example, in the state of residence of the company or of the employees, if a permanent establishment for the company in Germany is not set up due to the interruption period. For this purpose, spontaneous information can be transmitted to the tax administration of the other contracting state.

## M. No change of taxation right due to home office work for border crossers or cross-border employees

In the above-mentioned "FAQ "Coronavirus" (taxes)", the Federal Ministry of Finance has commented on the tax situation of so-called border crossers, i.e. people who normally move daily from their place of residence to another country to work. If these persons now increasingly work from their home office due to official recommendations or orders, instructions from their employer or the closure of the border, this can lead to a partial change in taxation rights. The Double Taxation Agreements (DTAs) between Germany and the countries concerned do not contain any common regulations for this case. The situation to date is therefore as follows:

- **France** (BMF letter dated May 25, 2020<sup>28</sup>):
  - No adjustment is necessary for border crossers (*Grenzgänger*). If border crossers residing in the border zone work on a remote basis, the work is deemed to have been performed in the border zone. Days on which work could not be performed due to health regulations/recommendations are also counted as working days.
  - For cross-border employees (*grenzüberschreitend tätige Arbeitnehmer*), however, additional home office days have no effect on the allocation of taxing rights. The employee is, however, obliged to keep appropriate records, identical in both states. This provision nevertheless only applies if the respective salary is actually taxed by the contracting state in which the employee would have worked. The provisions originally agreed only until May 31, 2020 have been extended until September 30, 2021 by a BMF letter<sup>29</sup>. After that date, the period has been extended by one month each time until the agreement is terminated by a contracting state.

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<sup>28</sup> Available [here](#).

<sup>29</sup> Available [here](#).

Benefits under the social security law of a contracting state shall be taxed only in the state of residence.

- **Belgium** (BMF letter dated May 6, 2020<sup>30</sup>)

The same applies as for cross-border employees in France. The measures have originally been agreed only until May 31, 2020, but have been extended several times by BMF letters – for now until June 30, 2021.<sup>31</sup> After that date, the period is extended by one month each time until the agreement is terminated by a contracting state.

- **Switzerland** (BMF letter dated June 12, 2020<sup>32</sup>):

- For border crossers, the days worked in the home office are deemed to have been worked in the country in which the place of work would have been located without the measures to combat the COVID-19 pandemic. Days on which work could not be carried out due to COVID-19 measures, but on which wages have been paid, are also counted as working days.
- For employees working across borders, however, additional home office days may be counted as days worked in the country in which the place of work would have been located without the measures to combat the COVID-19 pandemic. However, this provision applies only to the extent that the respective salary is actually taxed by the contracting state in which the cross-border employee would have worked.
- The short-time work compensation paid by Switzerland is to be qualified as remuneration for employment and is only taxable in Switzerland.
- The German short-time work compensation is considered as taxed in Germany and is tax exempt in Switzerland.
- The provision originally covered the period from March 11, 2020 to June 30, 2020, which has been extended by one month at a time since the agreement was not terminated by any contracting state. In a BMF letter dated May 7, 2021<sup>33</sup>, the agreed measures have been extended until June 30, 2021. Thereafter, the period is extended by one month at a time until the agreement is terminated by a contracting state.
- The Federal Ministry of Finance announced in a BMF-letter dated September 8, 2021 that the competent authorities in view of the ongoing measures to combat the COVID-19-pandemic, do not intend to terminate the consultation agreement of June 11, 2020 including the amendments before December 31, 2021.<sup>34</sup>

- **Poland** (BMF letter dated December 8, 2020<sup>35</sup>):

- For employees working across borders, the days worked in the home office are deemed to have been worked in the country in which the place of work would have

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<sup>30</sup> Available [here](#).

<sup>31</sup> Available [here](#).

<sup>32</sup> Available [here](#).

<sup>33</sup> Available [here](#).

<sup>34</sup> Available [here](#).

<sup>35</sup> Available [here](#).

been located without the measures to combat the COVID-19 pandemic. This does not apply to days worked that would have been spent either in a home office or in a third country regardless of the measures to combat the COVID-19 pandemic. Employees who work across borders are obliged to keep appropriate and in both countries uniform records.

- However, this provision applies only to the extent that the respective salary is actually taxed by the contracting state in which the cross-border employee would have worked.
  - The provision applies equally to income from public service.
  - It covers the period from March 11, 2020 to December 31, 2020, after which the period is extended by one month at a time until the agreement is terminated by a contracting state.
- **Luxembourg<sup>36</sup>, Netherlands<sup>37</sup> and Austria<sup>38</sup>**: The Federal Ministry of Finance has reached agreements with these states in order to prevent a change in the taxation right due to a higher number of home office days because of the Coronavirus crisis. The provisions originally agreed only until April 30, 2020 have been extended with regard to Luxembourg until December 31, 2021<sup>39</sup>, with regard to Austria until March 31, 2021<sup>40</sup> and with regard to the Netherlands until September 30, 2021<sup>41</sup> by BMF letters. After that date, the period is extended by one month at a time until the agreement is terminated by a contracting state.

Moreover, the Federal Ministry of Finance points out that corresponding negotiations are also being examined with other neighboring countries and that information about the conclusion of further agreements will be provided in a timely manner.

## N. Income tax treatment of financial aid due to the Coronavirus crisis

It was already apparent from the administrative agreement between the federal and state governments of March 29, 2020<sup>42</sup> that the financial aids provided due to the Coronavirus crisis are regarded as taxable business income. To ensure that the recipients will profit from the entire financial aid, the financial aid is not taken into account with regard to the tax prepayments for 2020.<sup>43</sup> In a decree of July 31, 2020, the Bavarian State Office of Taxes confirmed the view that the financial aid is regarded as taxable business income, irrespective of a private use by a taxpayer.<sup>44</sup>

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<sup>36</sup> Available [here](#).

<sup>37</sup> Available [here](#).

<sup>38</sup> Available [here](#).

<sup>39</sup> Luxembourg [here](#).

<sup>40</sup> Austria [here](#).

<sup>41</sup> Netherlands [here](#).

<sup>42</sup> Available [here](#).

<sup>43</sup> Available [here](#).

<sup>44</sup> LfSt. Bayern, Vfg. v. 31.07.2020 – S 2143.2.1-10/3 St32.

## O. Fiscal support measures in the Annual Tax Act 2020

The Annual Tax Act 2020 (*Jahressteuergesetz 2020*)<sup>45</sup> dated December 21, 2020, provides for further fiscal support measures to mitigate the Coronavirus crisis.

- As of the 2020 assessment period, there will be a new uniform profit limit and further improvements for investment deductions (Section 7g ITA). The previously applicable different company size limits as requirement for claiming investment deductions will be replaced by a profit limit of EUR 200,000 that applies to all types of income. The new uniform profit limit also applies to the claiming of special depreciation allowances pursuant to Section 7g ITA. In addition, the investment costs eligible for preferential treatment are increased from 40 to 50 percent and leased assets can be taken into account without restriction in the future.
- The limited and temporary tax exemption introduced by the Corona Tax Relief Act for employer subsidies for short-time allowances (*Kurzarbeitergeld*) and seasonal short-time allowances will be extended for one year. The tax exemption thus applies to pay periods beginning after February 29, 2020 and ending before January 1, 2022.
- The option of tax-free payment of a corona bonus - in addition to the wages owed anyway - will be extended until June 30, 2021. Because the tax-free payment was initially limited from March 1 to December 31, 2020, a care bonus paid out only in the first half of 2021, for example, would no longer have been tax-privileged. The extension of the period does not mean that another EUR 1,500 tax-free – in addition to EUR 1,500 already tax-free in 2020 – may be paid out in the first half of 2021. Rather, however, employers may be motivated to give their employees a Corona bonus for the first time after the turn of the year.
- With the home office lump sum as part of the employee lump sum, an unbureaucratic tax consideration of home office work is made possible for the years 2020 and 2021. The new regulation provides for a lump-sum deduction of EUR 5 per day, a maximum of EUR 600 per year - corresponding to 120 home office days - as business expenses or income-related expenses (*Werbungskosten*). The lump sum is only granted for the days on which work is performed exclusively at home. Travel expenses are generally not deductible for these days; expenses for an annual ticket for public transportation, which was purchased in anticipation of its use for commuting to work, are deductible regardless. The home office allowance is also deducted from the standard deduction for income-related expenses.

## P. Extension of the tax return deadline for the calendar year 2020 and 2021

By the Act of February 15, 2021, the tax return filing deadline for the 2019 assessment period for advised taxpayers has been extended by six months to August 31, 2021 (instead of the regular date of February 28, 2021). The extended deadline is to be taken into account ex officio, no request from the taxpayer is required. The deadline extension does not apply to cases

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<sup>45</sup> Available [here](#).

where tax/assessment returns for the 2019 assessment period have been "requested in advance" by means of an order. Further, it does also not apply to non-advisory cases. The interest-free grace period for the 2019 assessment period has also been extended. The interest run of the so-called full interest will not start until October 1, 2021 (instead of the regular date of April 1, 2021).<sup>46</sup>

By the Act of May 21, 2021, the tax return filing deadline for the 2020 assessment period for advised taxpayers has been extended by three months to May 31, 2021. The extended deadline is to be taken into account ex officio, no request from the taxpayer is required. The deadline extension does not apply to cases where tax/assessment returns for the 2020 assessment period have been "requested in advance" by means of an order. For non-advised taxpayers, the tax return filing deadline for the 2020 assessment period has been extended by three months to October 31, 2021 (instead of the regular date of July 31, 2021). The interest-free grace period for the 2020 assessment period has also been extended. The interest run of the so-called full interest will not start until July 1, 2022 (instead of the regular date of April 1, 2022).

An extension beyond this in individual cases and upon request remains unaffected.

## Q. Reduction of trade tax advance payments

In principle, besides the competent municipality, the tax office can also adjust the trade tax advance payments if it becomes aware of changed circumstances with regard to the profit for the current assessment period (cf. Section 19 para. 3 TT). According to a decree<sup>47</sup> published on January 25, 2021, taxpayers who directly and significantly economically affected by the Coronavirus crisis may file an application for a reduction of the trade tax assessment amount for the purposes of the advance payments. The taxpayers may submit the application until December 31, 2021, stating their circumstances. The tax office shall not demand strict requirements for the evidence. If the tax office determines the trade tax assessment amount for the purpose of advance payments, the competent municipality is bound by this when determining its trade tax advance payments.

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<sup>46</sup> Available [here](#). Note: For (non-)advised farmers and foresters, other deadlines apply for filing the tax return and the full interest.

<sup>47</sup> Available [here](#).

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