

Tax relief measures in consideration of effects of the coronavirus announced by the German Federal Ministry of Finance in a letter dated 19 March 2020

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The Federal Ministry of Finance has issued today to the tax authorities of the German federal states a letter in which it deals with possible actions in order to tackle undue hardships which have already been and will be caused by the coronavirus epidemic.

According to this letter, which has been drafted with the mutual agreement of the Supreme Tax Authorities of the Federal States the following measures shall come into force with **immediate effect**:

1. Suspension of taxes and adjustment of advance payments

Until 31 December 2020, taxpayers who can demonstrate to be directly and not inconsiderably affected by the corona epidemic, can submit applications for

- the **suspension of taxes** already due or becoming due by that date, which are administered by the state tax authorities on behalf of the federal government,
- the **adjustment of advance payments** of income and corporation tax, by presenting their circumstances.

These applications are not to be rejected because the taxpayers are not able to prove the value of the losses incurred in sufficient detail. There are no strict requirements to be met when reviewing the conditions for deferrals.

As a general rule, the usually applicable interest charge of 0.5% per month (i.e., 6% p.a.) for the granting of a tax payment suspension should generally be waived by the tax offices.

However, it is explicitly stated that Sec. 222 sentence 3 and 4 of the Fiscal Code of Germany ("*Abgabenordnung*" or "*AO*") shall remain unaffected. Accordingly, wage taxes or other withholding taxes cannot be suspended and have to be timely remitted to the tax offices.

Requests for suspension of taxes due after 31 December 2020 and requests for adjustment of advance payments which only concern periods after 31 December 2020 must be specifically justified.

2. Postponement of enforcement measures

If the tax office considers enforcement measures regarding taxpayers, but it becomes known to the tax office on the basis of information from the taxpayer or in any other way that the taxpayer is directly and not insignificantly affected, enforcement measures shall be waived until 31 December 2020 for all taxes in arrears or becoming due by aforementioned dates.

In the cases in question, the late payment surcharges for these taxes accrued in the period from the date of publication of this letter until 31 December 2020 shall be waived as of 31 December 2020. The tax offices may regulate the remission by general ruling (section 118 sentence 2 AO).

3. Application of general rules for indirectly affected taxpayers

As these measures are clearly an exceptional benefit, the Federal Ministry of Finance clearly states that the general principles remain in full force for all taxpayers who are only indirectly affected, and all tax rules shall be applied in a mode of "business as usual" and no adjustments will be made due to the corona epidemic.

4. Summary

While it is greatly appreciated that the Federal Ministry of Finance has decided to start implementing tax measures to meet the effects of the coronavirus epidemic on the taxpayers in terms of conserving liquidity, there are a couple of uncertainties, how the wording of the respective instructions should be interpreted:

- First, it not yet clear, what the criteria look like for a taxpayer's proof of being "directly affected". This, however, is essential, as indirect effects will not suffice to obtain the help implemented by these measures and the used term leaves much room for interpretation.
- Second, it is unclear how the exact handling of the laws (remaining still in force) shall take place. The offered forms and templates to file requests mitigate this uncertainty to some extent. However, e.g. with regard to late payment surcharges, it should be considered whether a "simple" request for a deadline extension for the payment of a tax is not preferable or should at least accommodate the filing of such a form. This applies in particular, if it remains relatively unclear who can be deemed as only "indirectly" affected by the crisis.
- Third, there are also signs within single Federal States (e.g. in Bavaria) what shall happen with regard to advance payments of VAT. It would be desirable, if a mutual statement on this point would be included as well.

We hope that the tax offices will apply a broad interpretation of these measures and grant as much relief to the taxpayers as possible in the light of the ongoing situation. As the letter grants a huge amount of discretion to the single tax officer and time is crucial, the tax authorities should have a clear communication internally and externally that they taking these measures seriously and try to keep them as effective as possible.

Your German Hogan Lovells Tax team will be happy to assist you in your tax affairs.

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