



COVID-19: EMEIA EY Government Support Package

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Taxation in times of COVID-19

The German government has announced short, medium and long term measures to support businesses and individuals in order to mitigate the impact caused by the COVID-19 outbreak.

Although the implications for the economy remain unclear, businesses can seek to a wide range of legal and tax related measures to help navigate through the current crisis.

The government's emergency measures:

Areas being addressed:

1. Providing liquidity for businesses through KfW programs and expanding state guarantees
2. Cash-flow support, including tax deferrals
3. Extension of benefit compensations for lost wages and salaries due to formal short-time working arrangements
4. Decisive action together with European partners

In addition there are several EU-27 / European Commission programs in place or already initiated

These aims are primarily being delivered through:

- ▶ The banking system in terms of both financing schemes that have been announced
- ▶ The central tax system (covering cash tax deferral and employment support)
- ▶ Various support programs for SME and large enterprises

Government announced responses

Liquidity and financing

German Protection shield for businesses and companies

Helps companies affected by COVID-19 to access bank loans up to €1bn (partial indemnification by the 'Kreditanstalt für Wiederaufbau' [KfW])

Economic Stabilization Fund (WSF)

The WSF complements the German Protection shield and serves to stabilise companies in the real economy in order to secure jobs, supply chains and value creation. The WSF can inject equity capital into system-relevant enterprises by acquiring equity stakes or support them in recapitalisation measures by means of dormant holdings or subordinated bonds, including taking over debt instruments or certain liabilities issued up to 31 December 2021

Cash flow measures

Request for interest-free tax deferral for tax payers who can prove an immediate and significant impact of the COVID-19 crisis by disclosing their circumstances. The tax deferral is applicable till 31 December 2020 (after this date: requires specific justification) for federal taxes, VAT, corporate income tax and income tax

Full or partial refund of special VAT advance payment made under the deposit payment made for the deferred filing scheme

Waiving of enforcement measures for taxes including late fees

Administration

Federal measures:

Waived enforcement measures
Waived late-payment penalties

Measures by certain states:

Extending deadlines for tax returns or other documents
Temporary suspension of tax audits

All measures only on application, not automatically applied

Fixed costs and grants

Cash grants for microenterprises and self-employed persons

The emergency financial aid consists of taxable grants of up to €15k, which are granted in the form of a one-off payment for a period of three months

Other measures

Various financial and liquidity support measures of the individual federal states for small and medium-sized enterprises

Increase in guarantee rates for loans

Start-up booster (venture capital financing) as corona support for start-ups and young technology companies with a program volume of €2bn

Employment support

Short-time work / short-time allowance

Deferral of social security contributions

Exceptions to the Working Time Act for systemically important occupations

Welfare

Measures in place for at least two weeks from 20 March call for everybody to stay at home and only to leave for specific reasons. Travelling to and from work is only allowed if it is "absolutely necessary". Government advice is that employees who can work from home should do so

Liquidity and financing: German protection shield for businesses and companies

On 13 March 2020, the German government launched a protective shield for businesses and companies that will provide billions of euros in state aid via existing and new Kreditanstalt für Wiederaufbau (KfW) programs.

The European Commission has approved the regulations of the KfW special programs based on the adapted state aid framework.

Who is eligible?

Companies that have fallen into economic difficulties due to the COVID-19 crisis (no matter of size or age of the company)

Companies who had not already met the EU definition of a "company in difficulty" as at 31 December 2019

What does it cover?

Loans up to €1bn (per group) for the purpose of investments and business related resources

The loans will be secured by the KfW up to 90% (for small and medium-sized enterprises) or up to 80 % (for large enterprises)

For the KfW fast track loan up to €800k a risk assumption of 100 % is given

Profit and dividend distributions (latter only to the extent not required by law) are not permitted during the term of the loan, with the exception of customary market remuneration for managing directors/shareholders.

In case of significant influence by private equity investors, a loan can only be granted under the condition that no distributions to/from the investors are made during the term of the loan.

How is it accessed?

Applications are via the principal bank (after presentation of usual banking documents, e.g. financial statements)

No direct application with the KfW is possible

Simplified application procedures for loans up to €3m (based on the rating provided by the principal bank) or up to €10m (abbreviated risk assessment by KfW within 5 banking days)

Practicalities

Companies will need to consider if they are eligible to participate and how long it might take to get an approval for the loan

Companies will need to review how to demonstrate their credit strength. For those without an existing credit rating this means obtaining a credit rating from one of the major agencies

Finally companies will need to establish treasury team processes and establish liquidity plans

The application process is as follows:

- ▶ Preparation of KfW loan application by applicant
- ▶ Submission of the application to the house bank
- ▶ Examination of application as part of a credit assessment by house bank
- ▶ KfW starts review process
- ▶ Conclusion of the loan agreement between applicant and house bank
- ▶ Payment of loan amount by house bank

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Liquidity and financing: Economic Stabilisation Fund (WSF)

With the establishment of the WSF, large businesses which are critical for the system are to receive financial support for a limited period of time to overcome liquidity bottlenecks and to strengthen their equity base.

The WSF has a total volume of €600bn.

Who is eligible?

Large companies (excluding financial institutions) that are active in one of the sectors listed in Section 55 of the Foreign Trade and Payments Regulation (AWV)

Companies that are of "comparable importance for security or the economy"

Start-ups of particular importance (provided that they have been valued by private investors with an enterprise value of at least €50m in at least one completed financing round since 1 January 2017)

Companies who had not already met the EU definition of a "company in difficulty" as of 31 December 2019

Companies with a positive forecast for a going concern after surviving the COVID-19 crisis. The positive forecast for a going concern must be demonstrated by a profitability forecast of the applicant for 2020 and 2021

What does it cover?

€400bn is to be made available for guarantees for debt instruments and liabilities

€100bn is to be made available to refinance KfW special programs

€100bn is to be made available for recapitalisation measures (e.g. acquisition of subordinated debt instruments, hybrid bonds, profit participation certificates, silent partnerships, convertible bonds and shares in companies as well as the assumption of other components of the equity of affected companies)

How is it accessed?

The Federal Ministry of Economics and Energy (BMWi) decides on stabilisation measures upon application

Practicalities

Companies will need to consider if they are able to avail of other financial and liquidity state aid and if not, to participate on the WSF

The WSF is not subject to trade tax, corporate income tax or value added tax. The capital income of the WSF is not subject to withholding tax and the WSF is not itself required to withhold tax from payments

Application process is as follows:

- Negotiations must be conducted with the BMWi
- The Federal Ministry of Finance (BMF) then decides on the company's application in agreement with the BMWi

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A company can apply for short-time work allowance if 10 percent of its employees are affected by a loss of working hours. Previously, at least one-third of the employees had to be affected.

Short-time work allowance will also be paid for temporary employees.

The regulations are initially applied for a limited period (until the end of 2020).

Who is eligible?

Employees may be entitled to receive short-time work compensation under Sections 95 et seq. of the Second Book of the German Social Code (SGB III).

If short-time work is mandated due to a collective bargaining agreement, in a company agreement, or in the respective employment contract. If such an agreement does not exist, a corresponding agreement can be subsequently concluded with employees

The prerequisite for the allowance is a considerable loss of working hours. The loss of working hours may have economic reasons or be due to an "unavoidable event" such as COVID-19

Who is not eligible?

If the employer voluntarily closes the establishment to protect employees from COVID-19, the employees generally retain their right to be compensated. Although the closure means that employees are released from their work duties (unless it is possible to ask employees to work from home), the employer must continue to pay the remuneration. There is also no government assistance for the employer in this case.

What does it cover?

The entitlement to short-time work compensation is 60% (67% for employees with children) of loss after-tax. It is up to 77%/87% if working hours are reduced by at least 50% and short-time work is introduced for more than 3/6 months, respectively.

The employer must pay social security contributions on up to 80% of the loss of earnings without the employee's participation which will be fully reimbursed to the employer by the Federal Employment Agency

Short-time work compensation cap: The maximum net target remuneration is the assessment ceiling from the unemployment insurance, €6,900 gross (West) and €6,450 gross (East) per employee per month

Required applications to the Federal Employment Agency?

Notification of loss of work to the employment agency

Reimbursement request of short-time work compensation to the employment agency as well as social security contributions paid by the employer only

For more information

Practicalities

Short-time work can be used to reduce the agreed working hours and subsequently the remuneration payments. In order to compensate for the loss of remuneration, short-time work compensation ("KUG") can be applied for

Working time accounts (overtime account, flextime account) as well as outstanding vacation can be used to control working time in times of crisis and thus react to the reduced workload

If freelancers are no longer needed during the crisis period, termination/suspension of contractual relationships with freelancers or leased employees may be considered. Same is true for employees engaged via body leasing

If short time work is not sufficient to stabilise the economic situation of the company, restructuring measures should be considered (e.g. reduction of personnel)

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Cash flow support: Short-term liquidity through tax measures

The German government rolled out a comprehensive response package to mitigate the economic impacts of the accelerating COVID-19 crisis on individuals and businesses. The package is aimed at providing liquidity for businesses and securing jobs and incomes for employees.

Taxpayers can make an application for interest-free tax deferral, reductions of prepayments and waiving of enforcement measures.

The customs authorities announced similar support schemes.

Tax Deferrals

Interest-free tax deferral for all tax payers who can prove an immediate and significant impact of the COVID-19 crisis by disclosing their economic situation. There is no uniform definition of when a company is significantly affected by the crisis yet, however, the tax authorities have been instructed not to apply the relevant tests too strictly

The tax deferral is applicable till 31 December 2020 (after this date: requires specific justification) for federal taxes, VAT, corporate income tax and income tax

Waiving of enforcement measures for VAT, corporate income tax and income tax, including late payment penalties

How is it accessed?

All tax payers who can prove an immediate and significant impact of the COVID-19 crisis by disclosing their circumstances can apply for reduction of prepayments

Further details

MoF (BMF) Circular of 19 March 2020: Tax Deferral upon request

No deferral for withholding taxes (e.g., wage tax, capital gains tax) but waiving enforcement for wage taxes are in clarification

Additionally, some federal states announced further response packages, e.g. for the deferral of Real Estate Transfer Tax

Customs authorities announced that deferrals may also be granted for import VAT, excise taxes and air traffic tax. Similar conditions as set by the BMF must be met. Possibility for deferment of customs duty is still being discussed

Practical considerations

Full or at least partial refund of the deposit payment made for the deferred filing scheme (usually, 1/11 of the preceding years VAT liability) depending on federal state / discretion of local tax authorities

Identical State Decrees of 19 March 2020: Up until 31 December 2020 taxpayers can apply for a reduction in the trade tax base amount (which is used to determine trade tax prepayments) on providing a detailed description of the taxpayer's situation

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The Government's announcements are not the only ways to manage cash tax. There are other tax related measures, which are not specific to COVID-19, to manage liquidity.

Customs and Excise Tax measures generate cash flow advantages.

No VAT due for certain COVID related donation of goods or services according to new announcement of MoF.

The VAT rate for restaurants is likely to decrease soon from 19% to 7% (not decided yet).

Tax payments

Review tax prepayments for the current year if relevant and adjust past and future prepayments if appropriate (direct taxes, VAT, energy & electricity tax)

VAT cash flow

Look to recover VAT as quickly as possible by streamlining processes and potentially adjusting the invoicing process (timing, e-invoicing etc.)

Consider optional VAT treatments, adjustment of filing deadlines and possibility of output VAT reduction for bad debt reliefs

Optimisation of supply chains to avoid unnecessary registrations, application of simplification rules and cash-flow efficient optimisation of VAT payable, where legally possible

Customs & Excise cash flow

Evaluate recalculation and reduction of guarantees provided to customs

Optimise supply chains to keep imported goods under duty suspension as long as possible

Use special customs procedures, specifically Inward Processing to defer point of clearance for free circulation

In critical circumstance: consider applying for withdrawal of customs authorizations to release guarantees

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Practical considerations

Businesses should reevaluate whether their advance payments are still in line with the expected annual tax liability and claim refunds of overpayments as soon as possible

Practical considerations

Adjusting processes and systems can improve ongoing VAT recovery and increase the robustness of the VAT function

Practical considerations

Consider legal requirements for notification of customs authorities in case of critical financial condition (applies to holders of several customs authorization (e.g. Authorized Economic Operator / AEO) as well as business in difficulties definition (relevant for businesses enjoying specific energy & electricity refunds and exemptions)

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Fixed costs: Cash grants for microenterprises and self-employed persons

In order to support micro-entrepreneurs and solo self-employed persons who are economically affected by the COVID-19 pandemic, the German government has adopted an State aid program worth €50bn.

Who is eligible?

Microenterprises with up to ten employees (full-time equivalents)

Self-employed individuals

What does it cover?

Ongoing operating costs (e. g. rent, loans for business premises and leasing instalments)

Companies with up to five employees (full-time equivalents) receive a one-off grant of up to €9k for three months. The grant is spilt over the three month period. If the applicant can only prove costs of less than €9k for three months, then they will only receive a grant equal to the actual costs

Companies with up to ten employees (full-time equivalents) receive a one-off grant of up to €15k for three months. If the applicant can only prove costs of less than €15k for three months, then they will only receive a grant equal to the actual costs

If the landlord subsequently reduces the rent by at least 20 percent, the unused subsidy can be used for a further two months

How is it accessed?

Applications are approved by the respective federal states or municipalities

Practicalities

Companies will need to consider if they are eligible to participate

Further funding instruments might be available at a federal level (Bundesländer)

Link to the overview of the competent authorities or bodies in the federal states:

<https://www.bmwi.de/Redaktion/DE/Artikel/Wirtschaft/laender-soforthilfen.html>

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Measures in place for at least two weeks from 20 March call for everybody to stay at home and only to leave for specific reasons. Travelling to and from work is only allowed if it is "absolutely necessary". Government advice is that employees who can work from home should do so.

Home Office

"Home office" can only be ordered if there is a contractual basis which allows the employer to demand from the employees to work from home

Quarantine for certain employees

The ordering of a quarantine is an official measure which includes a ban on employment. On this basis, there is no claim to remuneration even if it turns out at a later stage that the employee was not infected with COVID-19. However, there is a claim for compensation under the German Protection against Infection Act (Infektionsschutzgesetz)

Compensation during childcare facilities/school closures

Employed guardians of children under 12 years of age or disabled are entitled to 67% of the net loss of earnings if childcare facilities/schools are closed and they therefore cannot work. The claim exists for a period of up to 6 weeks and is capped at an amount of 2,016 euros per month.

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Practical considerations

Review of employment contracts/company agreements, to what extent the possibility to arrange home office exists

Draft of communication with employees and works council

Draft of company agreements/individual agreements on home office

Practical considerations

Employers should look to consult where required on changes to employee terms and conditions and update employee policies and consider how this can best be done in practice within the current guidance on social distancing

Practical considerations

Employers should check whether the claim may not exist because they are obliged to continue to pay wages on the basis of Sec. 616 German Civil Code (BGB), if this is not contractually excluded.

There is also no entitlement to compensation if the working hours of the guardian are reduced due to short-time work.

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Partial suspension of the obligation to file for insolvency based on the effects of COVID-19

New legal regulations provide for incentives to contribute liquidity and the suspension of the obligation to file for insolvency and the payment prohibitions until 30 September 2020, provided that the insolvency is based on the effects of the COVID 19 pandemic and there is a prospect of eliminating the insolvency that has occurred.

New regulations in insolvency law

The obligation to file for insolvency is to be suspended if the insolvency maturity is based on the consequences of the COVID 19 pandemic, and there is a prospect of eliminating an existing insolvency

Both conditions are to be presumed if there was no insolvency on 31 December 2019

Creditors should only be entitled to file for insolvency if the reason for opening insolvency proceedings was already present on 1 March 2020

The liability of the board members according to the relevant company law provisions for payments that are made in the ordinary course of business are to be excluded

The regulations are initially limited until 30 September 2020

Practical considerations

Consideration should be given to monitoring reporting deadlines, applying for relief from filing tax deferrals if appropriate and reviewing the potential impact on all information due to be reported

However, it should be noted that the obligation to file for insolvency is not generally suspended. Rather, the suspension applies only to those cases in which the insolvency or over-indebtedness was caused by the COVID-19 pandemic. The law contains corresponding assumptions for such a fundamental development. This does not mean, however, that this assumption cannot also be rebutted in individual cases. If the assumption is later rebutted, the sanctions for disregarding the obligation to file for insolvency apply. This means that there is a personal liability (both civil and criminal) risk for the corporations representatives.

Therefore, anyone wishing to claim the suspension of the obligation to file for insolvency must consider whether the reason for insolvency is actually due to the COVID-19 pandemic or whether the insolvency would have occurred independently of it.

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The Government is introducing rules to strengthen the rights of the tenants.

Forfeiture suspension

For tenants weighing up whether to make rental payments against the risk of the landlord exercising its right to take back the premises (forfeiture), the German Civil Code has been changed. A landlord may not terminate a lease of properties or premises on the sole ground that the tenant fails to pay the rent in the period from 1 April 2020 to 30 June 2020 even if it is due, if the non-payment results from the consequences of the COVID-19 pandemic

Practical considerations

After 30 June 2020 (or any extended period), the right to forfeit will be reinstated, making tenants potentially liable for 3 months' rent at that point. The effective ability for tenants to withhold rent as a result of the prohibition on forfeiture may not be attractive where a tenant could not foresee making that lump sum payment once the moratorium is lifted. A rent concession may therefore be more attractive to both parties – for example overall rent reduction or deferral, rent free period or change to the usual payment cycle i.e. quarterly to monthly payments

Concessions would need to be agreed and documented (usually by side letter), being clear that the concession is temporary and detailing when it will end. Some concessions may also require lender or other third party (i.e. superior landlord) consent

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Business Continuity Management: Administration and governance

Substantial legal simplifications have been made in the conduct of general meetings (AG, KGaA, VVaG and SE), shareholders' meetings (GmbH) and general and representative meetings of the cooperative as well as members' meetings of associations.

In addition, the law provides for incentives to contribute liquidity and the suspension of the obligation to file for insolvency and the payment prohibitions until 30 September 2020, provided that the insolvency is based on the effects of the COVID 19 pandemic and there is a prospect of eliminating the insolvency that has occurred.

Regulatory expectations and filings

The challenge for business is maintaining compliance with guidance from regulators. Listed companies announcement requirements for material change; financial reporting requirements; increased access to confidential market sensitive data about COVID-19/insider information risk

Practical considerations

Businesses should consider who should be responsible for monitoring regulatory/government announcements and guidance, as well as ensuring that COVID-19 business impacts can be quickly escalated to directors

Consideration should also be given to monitoring reporting deadlines, applying for relief from filing certain reports if appropriate and reviewing the potential impact on all information due to be reported

Where appropriate, consider strategy for engagement with sector specific regulators

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Managing Director's duties

Directors will be making decisions at short notice, against an uncertain background. There are legal exposures, both corporate and personal

Practical considerations

Business should consider how to protect directors against wrongful trading and other liabilities, including taking best practice governance actions to protect against liability and the potential unwinding of transactions

A review of constitutional documents may still be needed to allow electronic signatures as well as giving consideration to alternates and powers of attorney to check who has authority to take necessary actions at short notice

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Besides liquidity preserving tax measures, the Circular issued by the German Government also contains administrative reliefs.

Furthermore, the German Government loosened some regulations contained in insolvency, private and corporate law.

Circular from the Federal Ministry of Finance

On 19 March 2020, the Ministry of Finance published a Circular and information on deferral and enforcement relief for affected taxpayers applicable to 31 December 2020 in connection with the COVID-19 crisis:

- Deferral of tax payments
- Reduction of tax prepayments
- Waiver of enforcement measures late-payment penalties

Insolvency and private law

Insolvencies due to the COVID-19 impact do not have to be filed until 30 September 2020

Suspension for certain obligations which were taken on prior to 8 March if their fulfillment would constitute a danger for health or economic survival

Lease agreements cannot be terminated due to outstanding payments for the period 1 April to 30 June if the lessee's inability to pay the lease payments is due to COVID-19 impact

Federal measures:

- Waived enforcement measures
- Waived late-payment penalties

Measures by certain states:

- Extending deadlines for tax returns or other documents
- Temporary suspension of tax audits
- All measures only on application, not automatically

Corporate law

Legally possible to hold the general meeting of shareholders virtually and without physical presence

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Our tracker provides a snapshot of the policy changes that have been announced in jurisdictions around the world in response to the COVID-19 crisis.

Policy changes across the globe are being proposed and implemented on a daily basis.

The document will be updated on an ongoing basis but not all entries will necessarily be up to date as the process moves forward.

Key jurisdictions covered by the Response Tracker include:

- ▶ Australia
- ▶ Austria
- ▶ Belgium
- ▶ Brazil
- ▶ Canada
- ▶ China
- ▶ Colombia
- ▶ Cyprus
- ▶ Czech Republic
- ▶ Denmark
- ▶ France
- ▶ Germany
- ▶ Greece
- ▶ Hong Kong
- ▶ Indonesia
- ▶ Italy
- ▶ Japan
- ▶ Luxembourg
- ▶ Malaysia
- ▶ New Zealand
- ▶ Norway
- ▶ Puerto Rico
- ▶ Singapore
- ▶ Slovak Republic
- ▶ Slovenia
- ▶ South Korea
- ▶ Spain
- ▶ Sweden
- ▶ Taiwan
- ▶ Thailand
- ▶ Ukraine
- ▶ United Kingdom
- ▶ United States



To download the latest Response Tracker visit:

[ey.com/en_us/tax/how-covid-19-is-causing-governments-to-adopt-economic-stimulus--](https://www.ey.com/en_us/tax/how-covid-19-is-causing-governments-to-adopt-economic-stimulus--)

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