

## German Ministry of Finance publishes decree on deferral and enforcement measures in response to COVID-19

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The German Ministry of Finance (MoF) published a decree dated 19 March 2020 regarding the deferral and enforcement measures and the adjustment of advance payments for Corporate Income Tax (CIT), Income Tax (IT) and Value Added Tax (VAT). Likewise, the lead tax authorities of the German federal states published corresponding decrees with respect to the Trade Tax (TT).

The measures aim to address undue hardships for German taxpayers directly affected by the Coronavirus (COVID-19) related economic hardship through the deferral of tax payments and the adjustment of tax prepayments.

Under the general provisions of the German Fiscal Code (Abgabenordnung), the tax authorities may grant a deferral of tax payments if the collection would mean considerable hardship for the debtor and the claim does not appear to be endangered by the deferral. Such application would generally have to be substantiated in detail. Furthermore, the deferral generally should only be granted upon application by the taxpayer and against provision of a security and is generally subject to interest.

According to the decree issued by the MoF, taxpayers who can demonstrate that they are directly and not only insignificantly affected by the economic impact of COVID-19 may, until 31 December 2020, submit applications for a deferral of the payment of CIT, IT or VAT already due or becoming due on that date.

The decree does not specify in detail how taxpayers can demonstrate that they meet these particular hardship requirements, however applications for deferral of payments as well as for adjustments of advance payments (see below) are not to be rejected because the taxpayers are not able to specify the amount or monetary value of the incurred damages in detail. In essence, the decree stipulates that the requirements to be met should not be interpreted too strictly when reviewing the conditions for the deferrals.

As a general rule, any interest on the taxes where payment was deferred accordingly, can be waived.

Any applications for a deferral of tax payments due after 31 December 2020 as well as applications for adjustment of advance payments (e.g., quarterly estimated payments, see below) which only concern periods ending after 31 December 2020 must again be specifically justified on the basis of the regularly applicable rules.

The general principles also apply to:

- ▶ Those taxpayers who are only indirectly or insignificantly affected
- ▶ To applications for the deferral of TT already due or becoming due (i.e., these are to be addressed to the municipalities)

Generally, no deferral is possible for German withholding taxes (including wage tax). However, the overall context of the decrees should be understood in a sense that it is

intended to achieve the same liquidity-saving effect in this area by abstaining from (otherwise to be pursued) enforcement measures without penalties. The Bavarian tax authority points out on its homepage that wage and other withholding taxes cannot be deferred, but that there is the possibility of applying for a stay of enforcement measures with the competent tax office. Thus, upon filing of such an application, all tax payments covered by the measures could be stopped.

According to the decrees issued by the MoF as well as the lead tax authorities of the German federal states, taxpayers who can demonstrate that they are directly and significantly affected by the economic impact of COVID-19 may, until 31 December 2020, not only submit applications for a payment deferral of taxes, but also for an adjustment of advance payments (quarterly estimated payments) relating to the periods ending on or prior to 31 December 2020 for CIT and IT, as well as the adjustment of the quarterly estimated payments for TT.

If the tax authorities become aware, through information from the debtor or by any other way, that the debtor is directly and significantly affected, enforcement measures shall be waived until 31 December 2020 for all CIT, IT and VAT liabilities in arrears or due by that date. In these cases, any late payment surcharges in the period from 19 March 2020 until 31 December 2020 shall be waived as of 31 December 2020.

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