

Austria implements fixed-cost subsidy to mitigate impact of COVID-19

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Executive summary

In order to support the recovery of the Austrian economy from the impacts of COVID-19, the Austrian Federal Government will provide a fixed-cost subsidy as an aid measure within the framework of the Corona Aid Fund. On 23 May 2020, the European Commission approved the fixed cost subsidy in a total amount of €8 billion (IP/20/928) after an examination of European Union (EU) State aid rules. On 25 May 2020, the Austrian Federal Ministry of Finance published the adapted Directive (Fixkostenzuschuss Richtlinie) in the *Austrian Federal Gazette* (BGBl. II No. 225/2020).

The basic requirement for a fixed-cost subsidy is the loss of sales in a specific period due to COVID-19 of at least 40% compared to 2019. Entities can receive subsidies of up to 75% of fixed costs. Actual fixed costs incurred in 2020 are the basis to calculate the subsidy. An advance payment of up to 50% of the total amount requested is possible. Authorities announced that the first payments will be made within 10 days upon application.

Detailed discussion

Loss of sales, calculation of fixed cost subsidy

For the calculation of the loss of sales, top-line sales as declared in the income tax/corporate income tax return are relevant. Sales of the second quarter of 2020 (1 April to 30 June 2020) must be compared to sales of the second quarter of 2019 to calculate the loss of sales.

As an alternative to the observation period of second quarter of 2020, up to three connected monthly observation periods may be chosen for the period of 16 March 2020 to 15 September 2020:

- ▶ Observation period 1: 16 March 2020 to 15 April 2020
- ▶ Observation period 2: 16 April 2020 to 15 May 2020
- ▶ Observation period 3: 16 May 2020 to 15 June 2020
- ▶ Observation period 4: 16 June 2020 to 15 July 2020
- ▶ Observation period 5: 16 July 2020 to 15 August 2020
- ▶ Observation period 6: 16 August 2020 to 15 September 2020

Fixed-cost subsidies of the follow percentages will be granted:

- ▶ 25% fixed-cost subsidy in the case of a loss of sales of 40 to 60%
- ▶ 50% fixed-cost subsidy in the case of a loss of sales of 60 to 80%
- ▶ 75% fixed-cost subsidy in the case of a loss of sales of 80 to 100%

The fixed cost subsidy is limited per entity to:

- ▶ A maximum of €30 million with a 25% subsidy
- ▶ A maximum of €60 million with a subsidy of 50%
- ▶ A maximum of €90 million with a 75% subsidy

If several affiliated entities submit applications, the maximum amount is only available once.

The fixed-cost subsidy is reduced by grants from local authorities in connection with COVID-19 and compensations under the Epidemic Act. There is no reduction for payments relating to Corona short-time work.

Beneficiary entities

A fixed-cost subsidy is granted only to entities that meet the following conditions cumulatively:

- ▶ Loss of sales due to the spread of COVID-19
- ▶ The company has taken reasonable measures to reduce the fixed costs to be covered by the subsidy (obligation to minimize damage)
- ▶ Registered office or permanent establishment in Austria and operational activity in Austria
- ▶ Bonus payments made in 2020 to the managing directors must not exceed 50% of the bonus payments made in 2019; remuneration paid in 2020 to the management and employees including remuneration in kind is not inadequate
- ▶ No dividend distributions, no repurchase of own shares and no release of reserves against retained earnings in the period of 16 March 2020 to 16 March 2021; moderate dividend distribution practice until 31 December 2021
- ▶ No entity in difficulty under Article 2 Sec 18 of the EU General Block Exemption Regulation 651/2014 (Allgemeine Gruppenfreistellungsverordnung)
- ▶ No opening of insolvency proceedings or the existence of the conditions for the opening of insolvency at the request of creditors at the time of the application:
 - In this case, a fixed-cost subsidy may be granted based on the EU de minimis regulation. In total, de minimis aid granted to a group of may not exceed €200,000.00 during the last three years
- ▶ No aggressive tax planning (i.e., no non tax-deductible interest or royalty payments to low-taxed affiliated entities during the last three years assessed)
- ▶ No final fiscal criminal penalty (excluding minor fiscal offenses) or corresponding association fines for deliberate intent during the last five years
- ▶ Obligation to pay particular attention to the preservation of jobs and the setting of reasonable measures to promote sales and job preservation
- ▶ Confirmation that fixed-cost subsidies are not used to repay financial liabilities and to indirectly finance the acquisition of fixed assets

No fixed-cost subsidies are granted to:

- ▶ Entities with more than 250 employees (full-time equivalent) as of 31 December 2019 who have terminated more than 3% of the workforce instead of using the short-time working model (exemptions available based on separate application)
- ▶ Entities in the financial sector, in particular credit institutions, insurance companies, investment firms and investment services companies, pension funds and non-profit organizations
- ▶ Entities in the (in)direct exclusive ownership of local authorities and other bodies under public law
- ▶ Institutions with a degree of self-funding of less than 75% in the (in)direct majority ownership of local authorities and other bodies of public law
- ▶ Companies receiving payments from the non-profit support fund
- ▶ Newly-established companies that did not generate sales before 16 March 2020

Definition of fixed costs

Fixed costs are exclusively expenses arising from an operating domestic activity for the period from 16 March 2020 to 15 September 2020, provided that they fall into at least one of the following categories:

- a. Commercial premises rents and leases directly related to business activities
- b. Insurance premiums (less insurance compensations)
- c. Interest expenses on loans, provided that loans are not passed on to affiliated entities as loans
- d. Financing cost share of lease payments
- e. Royalty payments to third parties
- f. Expenditure on electricity, gas and telecommunications
- g. Loss of value of perishable and seasonal goods, provided that they have lost at least 50% of their value due to COVID-19
- h. For business subject to income tax: appropriate entrepreneurial wages (between €666.66 and €2,666.67 per month)

- i. Personnel expenses incurred exclusively for the processing of crisis-related cancellations and rebookings
- j. Where a fixed-cost subsidy of less than €12,000 is requested: reasonable tax advice, audit or accounting costs not exceeding €500.00
- k. Expenses for other payment obligations not affecting staff

Depreciation of fixed assets is not part of a fixed-cost subsidy.

Application and payment

The application for a fixed-cost subsidy must be filed with COFAG (special entity set up by the Austrian Federal Ministry of Finance to process COVID-19 subsidies) via FinanzOnline (electronic filing system of the Austrian tax authorities) and must be submitted between 20 May 2020 and 31 August 2021. A disbursement in installments may be requested.

- ▶ The first tranche is limited to 50% of the total subsidy and may be applied for from 20 May 2020.
- ▶ The second tranche is limited to 25% and can be applied for from 19 August 2020.
- ▶ The third tranche can be requested from 19 November 2020.

The first tranche does not yet consider the value losses of seasonal goods and tax advisor costs. The disbursement of the third tranche requires qualified accounting data. If they are available in due time, the third installment can be requested as early as the second.

The application for a fixed-cost subsidy must include a presentation of the estimated or actual loss of sales and fixed costs in the relevant period.

For subsidies exceeding €90,000, the amount of the loss of sales and the fixed costs has to be confirmed by a tax advisor or public accountant and the application needs to be filed by a tax advisor or public accountant. If the entire subsidy does not exceed €12,000, then the application does not have to be filed by a tax advisor or public accountant. If the entire subsidy is between €12,000 and €90,000, then the confirmation of the tax advisor or public accountant may be limited to confirmation of plausibility.

At the request of COFAG and the tax authorities, the applicant must provide further information necessary for the examination of the application, as well as documents and confirmations. In addition, the applicant must confirm that all prerequisites for obtaining a subsidy are fulfilled.

The applicant must also undertake to provide all information at the request of the competent authorities, to grant the competent authorities the right of examination and inspection at any time and to notify them without delay if relevant circumstances change.

Decision on applications

Applications are examined by COFAG and the subsidy is paid out after approval. In the case of a fixed-cost subsidy exceeding €800,000.00, the approval of the supervisory board of COFAG is required.

Fixed-cost subsidies are granted on the basis of a private law agreement. There is no legal entitlement to the granting of fixed-cost subsidies.

Subsequent verification and repayment

The subsequent review of fixed-cost subsidies is carried out by the tax authorities. In any event, in the case of subsidies over €10 million, an ex-post case-by-case assessment must be carried out, in particular the net loss (actual damage) will be examined in order to avoid overcompensation of the damage. For subsidies of up to €10 million, similar checks are foreseen on a sample basis.

COFAG shall claim back fixed-cost subsidies in so far as it is later apparent that the conditions underlying the subsidy do not correspond to the actual circumstances. Abuse of subsidies entails criminal law consequences.

More information can be found at the following link in German: <https://www.fixkostenzuschuss.at/>

The overall framework for subsidies to cover fixed costs is €8 billion and it has been approved by the European Commission. As noted, there is no legal entitlement to a fixed-cost subsidy. Due to the cap on the total amount, entities should promptly address the issue of fixed-cost subsidies and process the necessary data. As many unanswered questions remain, further clarifications can be expected.

For additional information with respect to this Alert, please contact the following:

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