

[Latham & Watkins Tax Practice](#)

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## Germany Passes COVID-19 Tax Relief Measures

***Several state ministries of finance have issued decrees ruling reliefs to ease the economic burden taxpayers are facing due to COVID-19.***

The German government and administration have resolved to pass several measures across all areas of law — including in relation to taxes — in order to ease the economic burden raised by [COVID-19](#). Many businesses have been forced to decrease or even completely shut down their operational activities. The State of Bavaria as well as other federal states (*Bundesländer*) have also [issued a curfew](#), further limiting ordinary business activities. This economic slowdown will first have negative effects on the affected businesses' liquidity and financials — a development that will intensify in the coming weeks.

The tax administration has adopted certain tax relief measures to strengthen the affected businesses' liquidity and support their ongoing business operations. Beginning last week, several state ministries of finance have issued decrees ruling reliefs with respect to the tax assessment procedures and tax payments. On 19 March 2020, the German Federal Ministry of Finance (*Bundesfinanzministerium*) issued two letters with coordinated and generally applicable rules to support tax payers affected by COVID-19 (For details see BMF re tax reliefs for [income tax](#) purposes; BMF re tax reliefs for [trade tax](#) purposes).

The resolved measures are described below.

### **Deferral of tax payments (*Stundung*) without deferral interest (*Stundungszinsen*)**

Taxpayers who can demonstrate they are directly affected in a more than irrelevant manner (“*nachweislich unmittelbar und nicht unerheblich betroffen*”) by COVID-19 can apply for a deferral of tax payments (*Stundung*). Tax payments that can be deferred under the relief regime include (corporate) income tax (*Einkommensteuer* and *Körperschaftsteuer*), trade tax (*Gewerbesteuer*) as well as value-added tax (*Umsatzsteuer*). However, the relief measures thus far exclude withholding taxes like wage withholding tax (*Lohnsteuer*) and dividend withholding taxes (*Kapitalertragsteuer*).

Although the meaning of “directly affected in a more than irrelevant manner” is not entirely clear, tax authorities will likely not impose strict requirements when assessing whether to grant a deferral. More specifically, the letters of the Federal Tax Ministry states that an application for relief shall not be rejected merely because the applicant cannot quantify the negative effects of COVID-19 on his or her business. The letters suggests a rather generous interpretation of the terms, but whether the tax authorities adopt

such a generous approach in practice remains to be seen. In the meantime, several finance ministers of German states (*Bundesländer*) have confirmed this proactive and non-bureaucratic approach.

The letters also provide that in case such a deferral is granted, the tax authorities shall in general not levy the statutory 6 % p.a. deferral interest (*Stundungszinsen*). Although the rate of such interest (6% p.a.) is currently subject to constitutional proceedings and might therefore be void, the waiver of deferral interest is an appropriate measure to foster the businesses' liquidity. A simplified form for applying for the reliefs (as provided for by the Bavarian tax administration) can be found [here](#).

### **Tax enforcement relief (*Verzicht auf Vollstreckungsmaßnahmen*)**

In addition to the tax payment relief, the tax authorities shall not enforce any taxes due if the taxpayer is in a more than irrelevant manner affected by COVID-19. This stay-of-pay applies either upon a respective notice by the taxpayer to the respective tax office, or in case the tax office becomes otherwise aware of such circumstances.

In such cases, any late payment fees (*Säumniszuschläge*) incurred between 19 March 2020 (day of the publication of the relief measures) and 31 December 2020 will be waived.

### **Reduction of advance tax payments (*Vorauszahlungen*)**

Where a taxpayer directly affected in a more than irrelevant manner by COVID-19 applies for, advance payments (*Steuervorauszahlungen*) for (corporate) income tax and value-added tax purposes shall be adjusted (reduced). The same applies for advance payments for trade tax whereby such advance payments may not only be reduced upon an application by the tax payer, but also if the competent tax office learns that the taxpayer is affected by COVID-19 in a more than irrelevant manner.

As for deferral of tax payments, applications for adjustments of advance payments shall not be rejected merely because the applicant cannot detailed quantify the negative effects of COVID-19 on their business.

### **Limitations of the measures**

- As outlined above, the tax relief measures only apply for taxpayers who are directly affected in a more than irrelevant manner by COVID-19. On the basis of several statements of several finance ministers of German states (*Bundesländer*), the respective tax authorities should apply these terms in a rather generous manner. In any case, it is recommended to apply for such measures at an early stage and to coordinate closely with the competent tax authority.
- Currently, the tax relief measures only apply until 31 December 2020. Depending on the overall economic effects of COVID-19 on German businesses, such period might be extended.
- In respect of trade tax, the decision in respect of tax deferrals, etc. remains within the competence of the local municipalities and is thus subject to a decision of each individual case.

### **Outlook: Further tax reliefs**

In addition to the relief measures formally adopted, the following additional measures as provided under the General Tax Code (*Abgabenordnung*) might be considered to further provide relief to taxpayers affected by COVID-19:

- **Extension of filing deadlines:** An extension of the filing deadlines could effectively relieve affected taxpayers and their counsels. Beside the administrative relief, taxes would be assessed and become payable later in the year 2020 or even 2021, ensuring liquidity during the next weeks.
- **Equitable relief (*Billigkeitserlass*):** Taxes can be waived (partially) if their collection would constitute a hardship in the individual case. The letters issued by the German Federal Ministry of Finance on 19 March 2020 do not address this type of relief. However, taxpayers can apply for such relief on an individual basis if they can demonstrate that the collection of the taxes could seriously endanger or destroy their economic existence.
- The current situation is best described as fluid and further reliefs will likely be adopted.

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