

BDO CARES – RECOMMENDATIONS IN TIMES OF THE CORONAVIRUS CRISIS



At present, no one can foresee how great the impact of the Corona crisis will be on the economy and how long we will have to deal with the consequences. We are all currently facing serious challenges. We therefore see it as our task to be at your side as best we can. To this end, we are constantly monitoring the situation and the recommendations of the relevant experts and authorities. We at BDO are prepared to react to new developments with the appropriate measures at all times. Therefore we have set up various expert groups and taken the necessary organisational measures. Our experts can be contacted by e-mail and telephone at any time.

Today we would like to inform you about important considerations and measures that may now have to be taken. These do not claim to be exhaustive and are not intended to replace individual advice, but to provide initial assistance. The government is in the process of creating a new legal framework and launching numerous measures to support companies, especially SMEs. We will gladly provide you with our assistance in this process.

SAFEGUARDING INTERNAL PROCESSES

In this respect, considerations arise regarding the employees and their further activities. In addition to the necessary daily behaviour (e.g. hygiene, business trips, etc.), certain issues emerge, for example, regarding the relocation of activities to the home office: if necessary, check the communication and IT infrastructures to support employees' teleworking and remote access by customers. At the same time, the activities and requirements of the employees must be adapted due to possible need for childcare. This gives rise to questions of labour and tax law.

HANDLING SHORT-TIME WORKING BENEFIT

In order to preserve jobs, the short-time working regulations are to be adapted and significantly simplified by the beginning of April as part of a short-term legislative package, thus considerably improving the possibilities of receiving this benefit.

If companies order short-time work due to the global epidemic of the Corona virus and this results in loss of earnings, affected employees can receive short-time working compensation. To be eligible for short-time work compensation, normal working hours have to be reduced significantly for a limited period of time. This is particularly the case if government protective measures cause the company to close down temporarily or if deliveries or customers/guests are absent due to the Corona virus and the employees' working hours have to be reduced as a result.

The benefit has to be applied for by the employer. Affected companies can have wage costs and social security contributions paid by the Federal Employment Agency, temporary workers are included in the future and only 10 % of employees must be affected by short-time working for the regulations to take effect.

ABOUT BDO

With over 1,900 employees across 27 different locations, BDO is one of the leading companies for auditing and audit-related services, tax and business law consulting, and advisory services in Germany.

BDO AG Wirtschaftsprüfungsgesellschaft is a founding member of BDO International (established in 1963). With more than 88,000 employees across 167 countries, it is currently the only globally active auditing and consulting organisation with European roots.

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PROTECTIVE SHIELD FOR COMPANIES – SUPPORT FROM THE KfW BANK

A so-called protective shield has already been decided for businesses and companies. The measures with unlimited financial volume are intended to alleviate financial hardship through no fault of their own, especially for small and medium-sized enterprises. Via their house banks, companies can obtain access to loans and guarantees from the state-owned KfW Bank.

This bank uses various measures to facilitate the short-term supply of liquidity to the companies. In existing promotional programmes, the access conditions and terms for companies have been improved or made easier:

1. KfW COMPANY LOAN OR ERP START-UP FINANCING – UNIVERSAL

- ▶ Increase in the assumption of risk (indemnification) for the intermediary financing partners (usually the house banks) of up to 80% for working capital loans of up to EUR 200 million in credit volume, in order to facilitate the willingness of the financing partners to grant loans
- ▶ Extending the indemnification to large companies with an annual turnover of up to EUR 2 billion (previously EUR 500 million)

2. KfW FINANCING FOR GROWTH

- ▶ Temporary extension to general company financing, including working capital by way of syndicate financing (previously limited to investments in innovation and digitalisation)
- ▶ Increase of the turnover limit for eligible companies from EUR 2 billion to EUR 5 billion
- ▶ Increase of the pro-rata risk assumption to up to 70 %. This will facilitate access for medium-sized and larger companies to individually structured, tailor-made syndicated financing

In addition, the KfW Bank will prepare further special programmes and introduce them as soon as possible. To this end, the risk assumption for investment funds (indemnifications) will again be significantly increased and will be up to 80% for operating funds and even up to 90% for investments. It is intended that companies that have temporarily experienced financing difficulties due to the crisis (crisis-related increase in risk tolerance) will also be able to take advantage of these programmes. The launch of these special programmes is subject to approval by the European Commission.

TAX MEASURES

Prepayment: If you expect to lose a lot of turnover and profits, you should apply for a reduction of the corresponding tax prepayments. In the event of liquidity problems that are to be feared, an application for an interest-free tax deferral can also be considered. The next advance payment dates are already on 15 May and 10 June, therefore action is to be taken quickly.


The tax authorities have already provided an initial, simple form for these two cases. However, it must also be taken into account that authorisations for direct debiting will continue to exist for the time being. These could be revoked by the tax authorities at short notice to prevent larger direct debits.

There are also certain issues to be considered from a VAT perspective, in particular:

- ▶ VAT compliance obligations
- ▶ Applications for extensions of individual deadlines, permanent extensions, deferral requests, offsetting, etc.
- ▶ Effects on current business operations and their VAT handling - e.g. cancellation, rebooking and alteration fees, the question of the deduction of input tax from the costs of equipping employees for home offices or, in the event of a loss of receivables, the reduction of the VAT liability due to irrecoverability (reduction of the tax base)
- ▶ Reactions of German tax authorities and in other countries

We will be holding a webinar on these subjects from 11:00 to 12:00 am on 27 March 2020, to which we cordially invite:

WEBINAR
Opportunities and risks from a tax perspective
in times of Corona
27 March 2020, 4 PM to 5 PM (CET)



Many transfer pricing models provide for a minimum profit for certain companies through limited risk distributors or cost-plus methods. This can lead to tax payments even in the case of a group loss. Affected companies may consider a (temporary) adjustment of the model.

MEASURES WITH REGARD TO A GOING CONCERN

For many companies (and entire industries), the current developments also mean uncertainties regarding their ability to continue as a going concern. We support you in evaluating this development with a view to using the available options and fulfilling possible obligations to act under insolvency law. Our goal is to position your company optimally in the current situation. We pay particular attention to the announced government support measures (short-time work compensation, tax deferrals, KfW Bank loans, adjustments to insolvency law).

Together with you, we create the basis for your acutely necessary business decisions, e.g. with regard to possible staff reductions or the use of state aid programmes. At the same time, our results (e.g. through brief analyses of your company's ability to continue as a going concern) serve to create transparency and confidence of third parties with regard to your company. We can help you to better monitor current developments and react more quickly to changes.

Currently, the Federal Ministry of Justice and Consumer Protection has prepared a legal regulation to suspend the obligation to file for insolvency in order to protect companies that get into financial difficulties as a result of the Corona pandemic. The model for this is provided by regulations that were passed on the occasion of the flood disasters of 2002, 2013 and 2016.

According to a statement by the ministry, the aim is to prevent companies having to file for insolvency only because the aid decided on by the federal government does not reach them in time. The regular three-week period of the Insolvency Code for filing for insolvency is too short for these cases. For this reason, the obligation to file for insolvency is to be suspended until 30 September 2020 for the companies concerned.

The suspension is to be subject to the condition that the reason for the insolvency is based on the effects of the Corona pandemic and that there are reasonable prospects of reorganisation based on an application for public assistance or serious financing or reorganisation negotiations on the part of an applicant. In addition, an ordinance is being considered to authorise the Ministry to extend this measure - at most until 31 March 2021.

CORPORATE FINANCE MEASURES

In order to overcome corporate crises, far-reaching measures are often required to address the following issues.

These may relate to financing, for example: negotiations with stakeholders, investors, banks and other creditors may be necessary. Legal or financial issues may also be affected, for example if banks require an up-to-date situation assessment or due diligence. Short-term capital procurement measures and corporate transactions necessary to stabilize the company or group, more complex financing models such as debt-mezzanine swaps or subordination may become necessary.

In order to support the executive bodies of the companies, adjusted going-concern forecasts and liquidity planning are also to be prepared.

Finally, so-called distressed M&A activities, e.g. to generate liquid funds, should also be considered in the long term.

GOVERNMENT COMPENSATION OBLIGATIONS AS A CONSEQUENCE OF BUSINESSES CLOSURES AND BANS ON EVENTS

Federal states, regional subdivisions and numerous municipalities have now issued temporary bans on (major) events by means of general decrees or individual administrative acts. These bans have been significantly extended in recent days for various municipalities. Numerous companies - particularly in the catering and entertainment sectors - have now been forced to discontinue their business activities. In view of these drastic interventions in the usual business operations, existing compensation claims must be carefully considered and quantified in each individual case.

FURTHER CONSIDERATIONS IN THE CONTEXT OF THE CORONA CRISIS MAY CONCERN, FOR EXAMPLE:

- ▶ Risk management: Review the risk management system (e.g. communication channels, crisis management, business continuity, third-party risks and insurance)
- ▶ Financial reporting: Check any effects on financial reporting (e.g. appropriateness of accounting for value adjustments and/or provisions)
- ▶ Contract review within the supply chain: Check effects on the ability to meet contractual obligations on both the purchasing and the sales side
- ▶ Use of insurance cover

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