

COVID-19 – VAT relief

IN TERMS OF VALUE-ADDED TAX (VAT), COMPANIES SUFFERING FROM THE CORONAVIRUS CRISIS CAN AVOID LIQUIDITY DISADVANTAGES – IN SOME CASES, EVEN REFUNDS ARE POSSIBLE.

Executive Summary

- The measures apply to taxpayers who are directly and significantly affected by the coronavirus crisis.
- Rental companies are also affected by rent losses due to the coronavirus crisis.
- VAT can be deferred without interest.
- There are no strict requirements for proving fulfillment of the conditions.
- Enforcement measures can be postponed.
- Special VAT prepayments (*Sondervorauszahlungen*) already made can be refunded.
- The scheme applies to taxes up to 31 December 2020.

Relief measures at federal and state level (*Länder*)

For companies that are particularly affected by the economic consequences of the coronavirus crisis, it is possible to obtain deferrals, reductions of prepayments and a stay of execution for tax payments¹. These regulations also apply to VAT, as the Federal Ministry of Finance (BMF) has now clarified. At first glance, this is surprising as the tax authorities have been rejecting applications for VAT deferrals in principle on the grounds that the taxpayer collects the tax from the recipient for the tax authorities and that this has the effect of a transitory item for the entrepreneur.

¹ See also our [Covid tax update on income taxes](#). Forms already exist for the federal states of [Baden-Württemberg](#), [Bavaria](#), [Berlin](#), [Brandenburg](#), [Bremen](#), [Hamburg](#), [Mecklenburg-Western Pomerania](#), [Lower Saxony](#), [North Rhine-Westphalia](#), [Rhineland-Palatinate](#), [Saarland](#), [Saxony](#), [Saxony-Anhalt](#) and [Thuringia](#). In Hesse and Schleswig-Holstein applications can be submitted without using a specific form.

Companies directly and significantly affected

There are no strict requirements for verifying the conditions under which the coronavirus crisis has directly and not merely insignificantly affected a company. Plausible information from the taxpayer that the coronavirus crisis is having serious negative effects on his or her economic situation is sufficient for the tax authorities.

Everyday, the number of businesses directly affected and the number of owners facing numerous constraints on their daily lives is likely to grow. For example, the current non-payment of rents due to the COVID-19 crisis will lead to a lack of liquidity among landlords. Insofar as rentals in the commercial sector are subject to VAT, the VAT – as a rule for businesses – must nevertheless be included in the advance VAT returns if the landlord has executed his or her rental service, even if no payment is received. In this respect, a deferral – preferably interest-free – can prevent a liquidity disadvantage. Only those entrepreneurs who are subject to actual taxation (VAT becomes due at the time of the cash-in of the rent) do not need to transfer VAT to the tax authorities before receiving the rent.

With regard to coronavirus-related rent losses or rent reductions, we assume that the landlords concerned are entitled to interest-free payment deferrals. In this case, the legislator created the prerequisites for such revenue losses from an economic point of view on 27 March 2020 with the Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law (COVID-19 Act) by removing the possibility of termination.



Reimbursement of VAT prepayments

As the German Federal Ministry of Finance (*Bundesfinanzministerium – BMF*) has made clear², the measures even go one step further: it is possible for those who are not merely insignificantly affected to adjust VAT prepayments retroactively and reduce them to zero for 2020. This means that advance payments already made can also be refunded. This applies to cases in which a permanent extension has been granted. The application must be submitted informally or via the respective electronic transmission system (*Elektronische Steuererklärung – ELSTER*) to the responsible tax office³. If the direct and significant effect does not result from the trade practised (the direct and significant effect, as is assumed, for example, in the case of a stand constructor business), this should be explained in the application in a comprehensible manner.

Conclusion

Interest-free deferrals and refunds of VAT prepayments already made can be a simple means for affected companies to obtain additional liquidity during the crisis.

Some taxpayers must be careful not to suffer an additional liquidity disadvantage in the event of a loss of turnover due to the coronavirus crisis, if they also have to pay VAT on the lost turnover. We are of the opinion that such entrepreneurs are entitled to interest-free deferrals and that they can claim reimbursement of the tax prepayments.

However, it should be pointed out that, in our experience, the tax authorities in the individual federal states have different requirements in terms of who qualifies as “directly and significantly affected”. In the interest of uniform handling and legal certainty, it would be desirable if the new relief measures were applied and interpreted in a uniform, unbureaucratic and comprehensive manner. We would be happy to advise you on defining your approach to the tax authorities to secure your

liquidity, as well as on special “crisis-related” arrangements such as rent adjustments, rent-free periods or subsidies within the framework of tenancies, corporate restructuring and financial contributions (e.g., waiver of a loan).

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² Sh. [FAQ “Corona” of the BMF dated 1 April 2020](#) (point II.1).

³ For the procedure in ELSTER, please refer to the practical [instructions](#) of the Bavarian tax authorities.



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