

German Indirect Tax News

Tax relief and courses of actions available for the area of Indirect Tax in connection to COVID-19

In the following we have compiled the measures taken by the German official authorities for the area of Indirect Tax, in particular Value Added Tax, Energy Tax and Customs Duties in relation to COVID-19. In addition we inform about possible actions to increase liquidity.

A. VALUE ADDED TAX

The following options exist for companies that suffer **direct** and **not inconsiderable** economic damage as a result of the corona crisis:

- Application for an **interest-free tax deferral** of Value Added Tax (VAT) due or due to be paid until December 31, 2020, stating the financial situation; a direct debit mandate granted to the tax authority should be revoked. It is advisable to not submit the application before submitting the preliminary VAT return; it could also be beneficial to file an application for each return period separately;
- **Enforcement relief** regarding taxes in arrears or taxes due until December 31, 2020;
- **Remission of late payment fees** incurred in the period from March 19, to December 31, 2020;
- Full or partial **reduction of the 2020 special VAT advance payment** required for the permanent extension of the return deadline. The special advance payment can be refunded or offset against other outstanding payment charges. A reduction of the special advance payment does not affect the permanent extension.

Bad debts/reduction of the assessment basis

Companies are likely to face an increase in bad debt losses. In the case of taxation according to agreed remuneration, the **irrecoverable debts** regularly result in the possibility of reducing the taxable basis, and thus also the VAT. On the side of the recipient of the service, this results in a correction of Input Tax deduction.

Receivables are irrecoverable if the debtor fails to meet them and if, on objective consideration, it is to be expected that the creditor will not be able to enforce the payment claim (in whole or in part) in the foreseeable future. This has previously been assumed, for example, in the case of an outstanding debt of more than 6 months. Doubts as to the debtor's solvency are insufficient. Generally, a case-by-case examination, which considers the individual circumstances of the case, is required.

A (partial) waiver of the payment or an adjustment of the payment also affects the VAT and the Input Tax deduction.

German Indirect Tax News

Tax relief and courses of actions available for the area of Indirect Tax in connection to COVID-19

No VAT on medical in-kind donations

The Federal Government and the state governments have agreed to temporarily refrain from levying VAT on in-kind donations of medical supplies. This applies to protective clothing, masks and disinfectants donated to facilities which are indispensable to the management of the corona pandemic. These include in-kind donations to hospitals, medical offices, elderly care and nursing homes as well as public institutions such as fire brigades and police. The same applies to personnel which is provided free of charge for medical purposes. This regulation applies from April 3, 2020 until the end of the year. Normally, in-kind donations are subject to VAT, provided that they were eligible for full or partial Input Tax deduction.

FURTHER MEASURES TO INCREASE LIQUIDITY

Transition from taxation according to agreed remuneration to taxation according to fees received and change of the VAT return period

Upon application, the tax authorities permit taxation according to the fees received, especially if the total turnover in the previous calendar year did not exceed EUR 600,000 (increase as of January 1, 2020). In this case, the tax does not arise until the end of the return period in which the fee was collected. In the event of a change of this kind, it must be ensured that turnover is not recorded twice or remains untaxed. By referring to the principle of sectional taxation, the tax authority can reject an application for a change between the types of taxation during the year. However, a retroactive change may also be permissible.

Occasionally, a **change of the preliminary VAT return period** may also be appropriate. Businesses that submit quarterly returns and have had a surplus in their favor of more than EUR 7,500 in the previous calendar year may change the preliminary VAT return period and submit monthly returns. This can be of use if there are regular Input Tax surpluses.

Shift of the time at which VAT is incurred

If the point in time at which the VAT is incurred is based on an **acceptance test**, the point in time at which the VAT arises could be shifted by postponing this acceptance. An agreement regarding advance payments could also be beneficial. With advance payments the VAT does not arise until the payment is collected, under the condition that no partial services are provided.

When **vouchers** are issued, multi-purpose vouchers lead to a later turnover taxation in relation to single-purpose vouchers. In the case of a single-purpose voucher, the place of delivery or other service and the amount of VAT can be specified at the time of issue and the VAT arises at the end of the advance return period for issue. However, the issue of a multi-purpose voucher does not involve an exchange of services.

German Indirect Tax News

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VAT is only taxed when the service is actually provided at the time the multi-purpose voucher is redeemed. Consequently, a voucher that is not redeemed does not lead to taxation of sales according to the current legal understanding.

Optimization of processes

In individual cases, an improvement in liquidity can also be achieved by **optimizing processes**. For example, Input Tax can already be deducted in the advance return period in which all the prerequisites are met; under the other legal prerequisites, Import Turnover Tax can be deducted in the advance return period in which it arises. Internal company release processes sometimes lead to delays in this respect.

In the event of Input Tax overhang (refund item), the fastest possible transmission of the advance return and **coordination with the tax authorities** can accelerate the processing time.

Input Tax refund

The Input Tax refund procedure enables entrepreneurs to apply for a refund of VAT which has been paid abroad. Applications for 2019 must be submitted by September 30, 2020 for VAT paid in EU Member States. For third countries in the case of reciprocity, within the statutory period. Foreign companies can also apply for a refund of VAT paid in Germany under the legal requirements.

B. ENERGY TAX/CUSTOMS

In the case of taxes regulated by federal law and administered by the customs authority (e.g. Energy Tax and Air Traffic Tax), the main customs offices were instructed to meet the companies' needs in an appropriate manner to avoid undue hardship.

The following measures – similar to the ones regarding VAT – were agreed upon. They apply for taxable persons who were demonstrably and not inconsiderably affected if they state their financial situation:

- **Application for interest-free tax deferral** until December 31, 2020,
- **Facilitations for taxable persons regarding enforcement measures**,
- **Application for adjustment of the advance payments** until December 31, 2020.

In addition, we have the following information:

German Indirect Tax News

Tax relief and courses of actions available for the area of Indirect Tax in connection to COVID-19

Preferential issuing of EORI numbers for aid shipments

Parties who do not have an **EORI number** but urgently need one for the clearance of goods such as relief supplies, protective clothing, masks and medical supplies, can submit an "emergency application" which will be given preferential treatment. Evidence is required to prove that the goods are urgently needed. The EORI number required is used for identification and is valid throughout the EU.

Import of medical equipment – exemption from Customs Duties and Import VAT

Under certain conditions the import of special medical devices and protective equipment from non-EU countries (e.g. masks, test kits, respirators and other medical equipment) is temporarily exempt from Customs Duties and Import VAT. The exemption applies retroactively from January 30, 2020 until probably July 31, 2020.

EU wide export restrictions on protective equipment

The **national** regulations on export and movement of medical protective equipment adopted at short notice were repealed with effect from March 19, 2020. They will be replaced by a regulation which bans the export of certain medical devices and applies equally to all **European** member states.

Alcohol tax regulations related to the production of disinfectants

In order to meet the increased demand for disinfectants, which are often produced from ethanol, the customs authority has reacted with Alcohol Tax exemptions, which initially will be in effect until May 31, 2020.

All persons who already hold a license for the tax-free use of undenatured alcohol to produce pharmaceuticals may also use this license for the production of disinfectants since March 20, 2020. Pharmacies that are authorized to manufacture pharmaceuticals are allowed to use undenatured alcohol for the manufacture of disinfectants since March 17, 2020.

FURTHER MEASURES TO INCREASE LIQUIDITY

Electricity and Energy Tax relief

Regardless of the coronavirus pandemic, companies in the manufacturing, agricultural and forestry sectors can apply for a 25% reduction in Electricity Tax for electricity already taxed which was used for operational purposes, thus improving their liquidity. The reduction is granted if the amount of relief exceeds EUR 250 in a calendar year. Applications for relief for the year 2019 can still be submitted to the main customs office until December 31, 2020. Under similar conditions, the above-mentioned companies can also be granted tax relief for taxed energy products such as natural gas and various oils used for business purposes or used in preferential facilities.

German Indirect Tax News

Tax relief and courses of actions available for the area of Indirect Tax in connection to COVID-19

The excise tax law provides for numerous other possibilities of relief by which companies in the manufacturing sector can reduce their Energy Tax burden.

Deferral of payment of Customs Duties and Import VAT

On request and under certain conditions, the customs authority may grant interest-free deferral of payment of Customs Duties and import VAT. In the case of a deferral of payment, the duties deferred must be paid by the 16th day of the following calendar month at the latest. Operators who have AEO (Authorized Economic Operator) status and do not yet benefit from a deferral of payment can apply for it under simplified conditions.

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