

# CORONA - CRISIS FISCAL MEASURES

Updated (as of 12 April 2021)



The impact of the Corona crisis on society and public life in Germany remains enormous. After almost a year since the beginning of the pandemic, no one can foresee what will (still) come or what challenges we will (still) have to face. The Corona crisis brings about a daily need for action for the self-employed and companies and/or their management.

With the Third Corona Tax Assistance Act of 10 March 2021, the German government has once again adopted a further set of measures. By means of an administrative directive at the end of February 2021, the government created the possibility of a so-called "Digital-AfA"; this is intended to provide tax support for employees and employers when equipping a home office.

As a result of amendments to the law or corresponding resolutions, many of the facilitations already adopted for short-time work allowances, claims to subsidies and support programmes to improve liquidity (e.g. KfW-loans), extended deadlines for the obligation to file for insolvency, civil and company law regulations and state compensation obligations as well as, in particular, many tax law measures to ease the burden on affected companies were extended into 2021. The facilitations granted since the beginning of the crisis in the form of extended deferral and limited enforcement measures, adjustment of advance payments for income tax, corporate income tax and trade tax continue to be considerably simplified. The caps on loss carrybacks and provisional loss carrybacks have also been raised again.

With our detailed presentation, we would like to give you an overview and provide needed explanations of the individual measures. At the same time, however, we would like to draw your attention to ongoing developments that repeatedly lead to changes in the legal and tax framework. The overview can therefore only represent a momentary- nonetheless helpful - snapshot.

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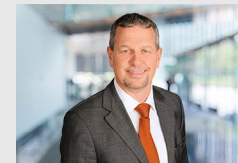
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## **A** THIRD CORONA TAX ASSISTANCE ACT

With a further legislative initiative, citizens as well as the economy should continue to be supported in coping with the economic consequences with the following additional measures.

### **1. TEMPORARY REDUCTION OF VAT RATES**

As of 1 July 2020, a reduction in the VAT rate for restaurant and catering services was already in effect under the Corona Tax Assistance Act of 19 June 2020. For these services, the reduced tax rate of 7% was initially applicable until 30 June 2021. This provision is now extended until 31 December 2022 by the Third Corona Tax Assistance Act. The supply of beverages is expressly excluded from this; the standard tax rate will continue to apply here.

### **2. ONE-TIME CHILD BONUS**

To support families, they will again receive a one-time child bonus of EUR 150 for each child for whom there is an entitlement to child benefit ("Kindergeld") for at least one calendar month in the calendar year 2021.

The child bonus will not be offset against the social welfare system's basic allowance ("Grundsicherung"). For tax purposes, however, it will be offset against the child allowance, so that only those income groups actually in financial need will ultimately benefit.

### **3. EXTENSION OF THE MAXIMUM AMOUNTS FOR LOSS CARRYBACK**

The loss carryback pursuant to Section 10d of the German Income Tax Act (EStG) was limited to EUR 1 million for single assessment and EUR 2 million for joint assessment. These caps were raised to EUR 5 million and EUR 10 million for losses of the assessment periods 2020 and 2021, respectively, by the Second Corona Tax Assistance Act of 29 June 2020. With the introduction of the Third Corona Tax Assistance Act, the tax loss carryback pursuant to Section 10d EStG will be adjusted again. The upper limits are increased to EUR 10 million for single assessment and to EUR 20 million for joint assessment. For losses incurred from the 2022 assessment period onwards, the original limits will apply again - according to the current status. The possibility of extending the carryback period was repeatedly not taken into account in the legislative process, which is why, as things stand at present, a loss carryback is only possible in the immediately preceding assessment period.

There are no plans to extend the loss carryforward for corporate income tax or to introduce a loss carryback for trade tax purposes pursuant to Section 10a of the German Trade Tax Act (GewStG) on the basis of Corona.

### **4. PROVISIONAL LOSS CARRYBACK**

The extended maximum amount for the loss carryback from the 2020 assessment period is intended to be directly usable with financial effect already in the 2019 tax assessment. Provided that the advance payments for 2020 have already been reduced to zero euros, a provisional loss carryback from 2020 can therefore be deducted from the total amount of income for 2019 upon application under the new Section 111 EStG. This amounts to a flat rate of 30% of the total amount of income for the 2019 assessment period; however, this does not apply to income from employment included therein. A higher deduction is possible if the anticipated loss carryback in this amount is proven on the basis of detailed documentation, e.g. by means of business evaluations.

If the reduction of advance payments for 2019 due to the expected loss carryback from 2020 leads to an additional tax payment in the actual assessment for 2019, this additional payment will be deferred without interest at the request of the taxpayer. The tax assessment for 2019, which includes the provisional loss carryback, is subject to review.

For 2020, there is then an obligation to submit a tax return; with the actual assessment of this and the determination of the actual loss carryback made at that time, the provisional loss carryback from 2020 assessed in 2019 will be reviewed. If there is no sufficient negative income that can be carried back in 2020 or if the taxpayer waives the application of a loss carryback in whole or in part, the new tax assessment in 2019 will result in corresponding tax arrears. Interest must be paid on these payments in accordance with the general rules, although the interest period does not start until 15 months after the end of the loss year - in this case 2020.

The renewed increase of the upper limits of the loss carryback to EUR 10 million and EUR 20 million by the Third Corona Tax Assistance Act must also be applied to the provisional loss carryback for 2020 (Sections 110, 111 EStG).

In addition, a provisional loss carryback from the 2021 assessment period has also been included in the 2020 tax assessment. The requirement here is also that the advance payments for 2021 have been reduced to zero euros.

## **B** OTHER TAX MEASURES

### **1. DIGITAL DEPRECIATION (DIGITAL-AFA)**

Already in January 2021, the federal and state governments discussed better depreciation options for computer hardware and software. The final implementation took place with the publication of the BMF letter dated 26 February 2021.

In accordance with the letter, computer hardware as well as operating and application software can be depreciated over a useful life of either three years or only one year. The BMF classifies the following assets, among others, as computer hardware:

- ▶ Computer, e.g.: Notebook, tablet, slate, mobile thin client,
- ▶ stationary or mobile workstation,
- ▶ docking station,
- ▶ Input devices, e.g.: Keyboard, mouse, scanner, camera, microphone, headset,
- ▶ External storage, e.g.: Hard disk, DVD/CD drive, flash memory, streamer, and
- ▶ Output devices, e.g.: Beamer-projector, plotter, monitor, printer.

The BMF defines operating and user software as all programs for data input and processing. In addition to standard applications, this also includes individual applications such as ERP-software, software for merchandise management systems, for company administration or for process control.

All enterprises may claim the depreciation for fiscal years ending after 31 December 2020. In addition, the residual carrying amount of digital business assets already purchased or manufactured in the 2021 assessment period can be written off in full. The new rules will apply to private assets from the 2021 assessment period.

## **C** ANNUAL TAX ACT 2020 (JAHRESSTEUERGESETZ 2020)

With the Annual Tax Act 2020 (JStG 2020) adopted on 28 December 2020, the German legislator also grants further relief to mitigate the economic effects of the crisis.

### **1. HOME OFFICE FIXED ALLOWANCE (HOMEOFFICE-PAUSCHALE)**

In principle, expenses for the home office are not deductible. However, the deduction is allowed if the home office forms the centre of the entire business and professional activity (full deduction of expenses) or if no other workplace is available for the business or professional activity (deduction of up to EUR 1,250 per year).

For the years 2020 and 2021, taxpayers can alternatively claim EUR 5 per day, but a maximum of EUR 600 per year, for a maximum of 120 days on which they are exclusively conducting business or professional activities in their home office. A deduction of travel expenses (e.g. commuting allowance, travel expenses) is then not permitted for these days. For the home office fixed allowance, the prerequisites for a work room at home do not have to be met (e.g. activity at the "kitchen table"). It can also be claimed if its requirements are met, but the taxpayer wishes to waive the itemized determination of expenses.

Detailed information on the deductibility of expenses for a home office and the fixed allowance can be found on our website at [BDO Insight](#).

### **2. FISCAL HANDLING OF THE SHORT-TIME WORK ALLOWANCE**

Short-time work allowance is a tax-free wage replacement benefit, comparable to sick pay or parental allowance. Although such benefits are tax-exempt, they are included in the electronic wage tax statement and require the submission of an income tax return because they are subject to the so-called progression proviso. The tax-exempt income is included in the calculation of the standard tax rate, which increases the individual tax rate due to the progressive tax rate. This is applied to the remaining income, which can lead to tax arrears for the taxpayer in certain constellations.

Please refer to our [website](#) for explanations and contact persons regarding short-time allowance and its legal aspects.

The limited and fixed-term tax exemption of employer subsidies for short-time allowance and seasonal short-time allowance introduced by the Corona Tax Assistance Act of 16 June 2020, is extended by the JStG 2020 until 31 December 2021. The tax-free employer allowances are also subject to progressivity and must be entered by the employer in the electronic wage tax certificate.

A second regulation amending the Short-Time Workers' Allowance Regulation (Kurzarbeitergeldverordnung) is intended to extend access to short-time work allowance for cases in which short-time work is newly introduced or reintroduced after an interruption of at least three months - instead of by 31 March 2021, as was previously the case - by 30 June 2021 at the latest. The lowering of the requirements for the granting of short-time allowance will thus be extended by three months.

### 3. REVISION OF THE INVESTMENT DEDUCTION AMOUNT

The investment deduction amount pursuant to Section 7g of the German Income Tax Act (EStG) will be made more flexible with the introduction of the JStG 2020. Also bearing in mind the Corona crisis, this is intended to serve a more precise tailoring of tax breaks.

A uniform profit limit of EUR 200,000 now applies to all types of income as a prerequisite for claiming investment deductions. In addition, the investment costs eligible for tax relief will be increased from 40% to 50% of the anticipated acquisition or production costs. A change that had been announced in the current legislative process with regard to the operational use of the asset for more than 50% was not implemented; therefore, the requirement of at least almost exclusively operational use, i.e. at least 90%, remains. The amendment will apply retroactively to all fiscal years ending after 31 December 2019.

### 4. TAX-FREE SPECIAL PAYMENTS TO EMPLOYEES

On the basis of the Corona Tax Assistance Act passed on 5 June 2020, companies can pay their employees tax-exempt special payments of up to EUR 1,500 pursuant to Section 3 No. 11a of the German Income Tax Act (EStG) or grant them as benefits in kind. Initially, special payments received by employees between 1 March 2020 and 31 December 2020 were covered. The JStG 2020 now grants an extension of the payment deadline until 30 June 2021; this does not mean that the preferential amount of EUR 1,500 can be paid again, but merely that the payment period is extended. However, if the upper limit of EUR 1,500 has not been fully utilized in 2020, this can be done by mid-2021.

The prerequisite remains unchanged that the allowances and benefits are paid in addition to the salary that is owed anyway. The conditions specified in R 3.11 para. 2 sentence 2 nos. 1 - 3 of the German Wage Tax Guidelines do not need to be met. The tax-exempt benefits must be recorded in the payroll account. Other tax exemptions and valuation reliefs remain unaffected by this. The allowances and benefits also remain exempt from social security contributions. Likewise, the special payment is not subject to the progression proviso in accordance with Section 32b EStG. It is not a wage replacement benefit, but is intended to mitigate the additional burden of the Corona crisis.

## D CURRENT AND ADDITIONAL CORONA RELIEF PROGRAMMES

A variety of assistance programmes are in place to help sustain the livelihoods of small and medium-sized businesses in industries particularly affected by the pandemic.

November and December Assistance ("November- und Dezemberhilfe") is available to businesses that have been directly, indirectly or collaterally affected by the nationwide closures since 2 November 2020. The subsidy amounts to 75% of the respective average sales in November or December 2019, subject to certain conditions under state aid law. The eligibility period ended on 31 December 2020, and applications can still be submitted until 30 April 2021. Applications for amendments are possible until 30 June 2021.

For companies not affected by the nationwide closures in November 2020, Bridging Assistance II was provided, covering the funding months September to December 2020. Compared with Bridging Assistance I, the application requirements were lowered and the funding level adjusted. The application deadline was 31 March 2021, and applications can still be submitted until 31 May 2021.

Bridging Assistance III has been set up for the funding period January to June 2021. Compared with Bridging Assistance II, the application requirements, funding levels and eligible fixed costs have again been adjusted. For companies with a sharp drop in sales, the maximum amount of funding per month has been increased to EUR 200,000. Bridging Assistance III also applies to companies affected by the closures from 16 December 2020. In this respect, a maximum subsidy amount of EUR 1.5 million per month applies. Detailed explanations of the bridging aid III can be found [here](#).

Bridging Assistance III also includes the so-called "Restart Assistance" (Neustarthilfe): solo self-employed persons (and under further conditions also certain partnerships and corporations) can alternatively apply for a one-time lump-sum operating allowance for the period December 2020 to June 2021 in the amount of 25% of the comparative turnover in 2019 up to a maximum of EUR 7,500.

An additional offer further to the assistance provided by the federal government is the so-called "Hardship Assistance" (Härtefallhilfe). The amount of the assistance is based on the previously uncompensated burdens. It is calculated on the basis of the eligible circumstances of the previous business assistance. The maximum subsidy amount is generally EUR 100,000.

With the exception of certain applications for new Restart Assistance, all applications for the Corona aid programs can only be submitted by a verifying third party - such as auditors, tax consultants, lawyers. We will be happy to check the legal requirements and guide you smoothly through the complicated application process. Just contact us.. On our BDO website you will find a variety of other interesting information on Corona measures.

# **E** MEASURES ALREADY ADOPTED - EXTENDED TO 2021

## **1. ADJUSTMENT OF ADVANCE PAYMENTS FOR INCOME TAX, CORPORATE INCOME TAX AND TRADE TAX 2021**

Taxpayers who are verifiably directly and not insignificantly affected may submit applications for adjustment of advance payments for 2021 income tax or corporate income tax by 31 December 2021, submitting a description of their financial circumstances. In accordance with the BMF letter of 18 March 2021, these applications are not to be rejected because the taxpayers are unable to provide detailed evidence of the value of the losses incurred.

The same procedure is to be followed for trade tax (identical state decree of 25 January 2021). Taxpayers may submit applications for a reduction of the trade tax assessment amount for the purposes of the 2021 advance payments by 31 December 2021, setting out their circumstances. The adjustment of the advance trade tax payments will be made in particular in cases where the tax office also adjusts the advance income tax or corporate income tax payments.

For the 2020 assessment period, the tax offices were also very reluctant to set subsequent advance tax payments for the above-mentioned taxpayers in the course of generally reducing advance payments as unbureaucratically as possible. In practice, this is likely to remain the case even after the turn of the year, especially since the difficult economic situation in the industries concerned is generally known or has rather worsened. In such cases, you should actively approach your tax office. However, if a positive development of income in 2021 is foreseeable, advance payments should be voluntarily adjusted accordingly to avoid high final payments - and possibly interest.

According to information from the tax authorities, the special advance VAT payment for 2021 can be reduced to EUR zero on application for companies particularly affected economically by the Corona pandemic.

## **2. DEFERRALS**

### **a) Income taxes and value added tax**

Subject to the aforementioned conditions, taxpayers concerned may also submit applications for deferral of taxes already due or about to become due by that date until 30 June 2021. The deferrals will be granted until 30 September 2021 at the latest. Beyond 30 September 2021, final deferrals may be granted for taxes due by 30 June 2021, with reasonable instalment payments lasting no longer than 31 December 2021. In addition to income tax and corporate income tax, this also expressly applies to VAT. No strict requirements are to be applied when reviewing the conditions for (final) deferrals. Nor are these applications to be rejected on the grounds that the taxpayers cannot provide detailed evidence of the losses incurred in substantiating their value.

As a rule, the levy of deferral interest can be waived.

Any applications for deferral of trade tax must be addressed to the municipalities in the territorial states and to the competent tax office in the city states.

### **b) Wage tax**

Tax deductions (wage tax and capital gains tax) are not actually covered by the simplifications for procedural reasons. In justified exceptional cases, however, it is conceivable to apply for a deferral of execution without interest. In these circumstances, personal contact with the tax office is advisable. In addition, according to the BMF letter of 23 April 2020, a nationwide extension of the deadline for the wage tax returns to be submitted is also possible.

### **c) Social security contributions**

According to its notification of 11 March 2021, the National Association of Statutory Health Insurance Funds ("GKV-Spitzenverband") decided to extend the facilitated deferral of social security contributions for the months of January until March 2021. For employers affected by the shutdown, a simplified deferral of social security contributions is thus possible until the due date for contributions in April 2021 at the latest. The application must be submitted using a standardized application form.

A further prerequisite is that the immediate collection of contributions without the deferral would be associated with considerable hardship for the employer, despite the priority claiming of short-time work allowance, subsidies and/or loans. Deferral of contributions should therefore only be possible when all other forms of assistance have been used. In this respect, it must at least be assumed that (all) applications that come into consideration must have been submitted and will in all likelihood be approved. In the case of an application for short-time work, the deferral amount of the social security contributions due on the short-time work allowance must be forwarded immediately as soon as the employer has received the reimbursement from the Federal Employment Agency.

However, these applications should not be made lightly; a certain risk can never be completely ruled out in this area in terms of punitive law. We would like to expressly point out the uncertainties that exist in this context.

### **3. ENFORCEMENT MEASURES/DEFAULT SURCHARGES**

#### **a) Taxes**

In accordance with the BMF letter of 18 March 2021, no enforcement measures shall be taken until 30 September 2021 for all taxes in arrears or due by 30 June 2021, if the tax office becomes aware, based on information from the debtor or by other means, that the debtor is directly and not insignificantly affected by the consequences of the Corona virus.

In the cases concerned, the late payment surcharges incurred in the period from 1 January to 30 September 2021 shall be waived. If a reasonable instalment payment is agreed upon, an extension of the enforcement deferral for the taxes (including the waiver of the late payment surcharges incurred up to that date) due by 30 June 2021 is possible until 31 December 2021 at the latest. The tax offices can regulate the remission by general decree.

Here, too, applications for remission relating to trade tax must be addressed to the tax office in the city states and to the municipality in all other cases.

Insofar, as the Corona crisis should lead to delays in the submission of tax filings, the tax offices have been asked to waive any late surcharges.

For applications for (follow-up) deferral or deferral of enforcement as well as for adjustment of advance payments of the above-mentioned requirements, the general principles and obligations to provide substantiated evidence apply. This also applies to instalment payment agreements beyond 31 December 2021.

### **4. CUSTOMS**

On 30 March 2021, the Customs Administration adopted the measures decreed in the BMF letter of 18 March 2021 with regard to advance payments, deferrals and deferral of enforcement accordingly.

For clarification, it is pointed out that a deferral of VAT on imports is also possible if the applicant is entitled to (full) VAT deduction. In the case of federally regulated taxes administered by the Customs Administration, the main customs offices continue to be instructed to make appropriate concessions to taxpayers. This applies to certain excise and transfer taxes, essentially import sales tax, energy and electricity tax, tobacco, coffee and beer tax, various alcohol taxes and motor vehicle tax. These measures also apply to insurance tax and VAT, to the extent that these are administered by the Federal Central Tax Office.

### **5. DEADLINE EXTENSIONS**

In its letter dated 19 December 2020, the BMF initially extended the submission deadline for tax returns for the 2019 assessment period prepared by members of the tax advisory professions from the end of February to the end of March 2021; this has now been rescinded.

The "Law on the Extension of the Suspension of the Insolvency Application Obligation (...) and on the Extension of the Tax Return Deadline in Advised Cases and the Interest-Free Grace Period for the 2019 Assessment Period" of 15 February 2021 extends the tax return deadline ending at the end of February 2021 pursuant to Section 149 (3) of the German Fiscal Code (AO) for the 2019 taxation period by six months, i.e. until 31 August 2021, unless a special order (advance request) has been issued in individual cases. At the same time, the fifteen-month interest-free grace period under Section 233a (2) sentence 1 AO will be extended by six months, i.e. until 30 September 2021. Interest payments for the 2019 taxation period will therefore not begin until 1 October 2021.

In a letter dated 23 April 2020, the BMF also already extended the declaration deadline for quarterly and monthly wage tax returns during the Corona crisis. According to this letter, employers affected by the Corona pandemic in all federal states can apply for a maximum two-month extension of the deadline for the payroll tax returns to be filed. The payment dates will then also be postponed accordingly.

### **6. SPECIAL ARRANGEMENTS FOR CROSS-BORDER COMMUTERS**

The ongoing COVID 19 pandemic continues to challenge cross-border commuters who normally travel daily from their home to another state for work. Increased home office activity can trigger adverse tax consequences if, pursuant to the underlying rules of the relevant double-tax agreement of the two states concerned, exceeding a certain number of days on which the actual state of work is not visited leads to a partial change of the taxation right.

In order to mitigate or completely avoid this, the tax authorities have issued special rules for the taxation of cross-border commuters for the following states (latest publication, generally valid period, possibly an extension will be made):

- ▶ Belgium (23 March 2021, until 30 June 2021),
- ▶ France (16 March 2021, until 30 June 2021),
- ▶ Luxembourg (7 October 2020, until 31 December 2020),
- ▶ Netherlands (23 March 2021, until 30 June 2021),
- ▶ Austria (25 January 2021, until 31 March 2021),
- ▶ Poland (8 December 2020, until 31 December 2020) and
- ▶ Switzerland (3 December 2020, until 31 March 2021).

## **7. PROMOTION OF ASSISTANCE TO THOSE AFFECTED BY THE CORONA CRISIS**

As already published on 9 April 2020, the BMF issued a letter outlining tax measures to promote assistance for those affected by the Corona crisis. This was extended and supplemented in a letter dated 18 December 2020. For donations in this context, a simplified donation receipt in the form of a cash deposit slip or the banking institution's booking confirmation/statement is sufficient.

Non-profit corporations may use donations received, their own funds, rooms or personnel for tax-privileged support in cases of physical, economic or financial need, or make these available, despite deviating articles of association.

Companies can treat donations (assets, free services, etc.) from their domestic business assets as business expenses for companies and institutions (e.g. hospitals) directly and not insignificantly damaged by the Corona crisis or involved in dealing with the Corona crisis. In return, the benefits are operating income for the recipients.

The VAT-taxable provision of materials and rooms and of employees is exempt from VAT under the further conditions of Section 4 nos. 14, 16, 18, 23 and 25 of the VAT Act (UStG) as closely related transactions between the tax-privileged institutions - but only insofar as the transactions of the respective institutions are tax-exempt under the same provision, e.g. for transfers between the institutions named in Section 4 No. 16 UStG. Recognition as a charitable institution is not required for the application of the aforementioned VAT exemptions.

In the case of the free provision of medical supplies and the free provision of personnel for medical purposes by companies to institutions that are indispensable for coping with the Corona crisis, such as, in particular, hospitals, clinics, doctors' surgeries, rescue services, nursing and social services, old people's homes and nursing homes, as well as other public institutions such as the police and fire department, the turnover taxation of a free transfer of value is waived on an equitable basis. Nevertheless, according to the BMF letter of 18 December 2020, the corresponding input tax amounts can be claimed under the other conditions of Section 15 UStG by way of equity, contrary to Section 15.15 (1) of the VAT Application Decree (UStAE). However, the prerequisite is that the entrepreneur already intended to provide the services exclusively and directly when receiving the services.

Employees may donate part of their net wages if the employer forwards the payment to an institution entitled to receive donations. The donated part is not shown in the respective wage tax certificate and the donation cannot additionally be claimed as a private donation. Members of the Supervisory Board can also waive part, but this does not constitute a donation, which is why the half deduction ban remains in place.

Compensation for losses which tax-privileged organisations can prove to have suffered due to the effects of the Corona crisis up to 31 December 2021 from commercial business operations or in asset management, with funds from the non-material sphere, profits from special purpose operations, income from asset management or profits from commercial special purpose operations is not detrimental to the tax privileges of the respective corporations.

Likewise, the tax authorities allow tax-privileged organisations relief in the case of voluntary topping-up of short-time allowance and in the case of continued payment of honorary or exercise leader lump sums, even though it is not possible to carry out the activity, at least temporarily, due to the Corona crisis. In its letter dated 26 May 2020, the BMF supplements its initial comments with explanations in the case of an increase to over 80%. If the donations are gifts, tax exemptions can be granted under Section 13 of the German Inheritance Tax Act (ErbStG) if the relevant conditions are met.

The measures from the BMF letters dated 9 April and 26 May 2020, which were originally limited until the end of 2020, have been extended until 31 December 2021.

Most recently, the BMF (letter dated 18 March 2021) issued an equity ruling on the treatment of donations in kind from retailers to tax-privileged organisations. This stipulates that in the case of goods that are or have been donated to tax-privileged organisations by retailers who have been directly and not insignificantly negatively affected economically by the Corona crisis, the taxation of a gratuitous transfer of value is waived. This provision only applies to donations made or to be made between 1 March 2020 and 31 December 2021.

## **8. VALUE ADDED TAX FOR LEGAL ENTITIES GOVERNED BY PUBLIC LAW**

Most legal entities governed by public law had opted not to apply Section 2b UStG for turnover prior to 1 January 2021 under the previous transitional provision (Section 27 para. 22 sentence 3 UStG). This is because, in the course of the transition to the new provisions of Section 2b UStG, the legal entities under public law had to put the forms of cooperation practiced to date to the test and, if necessary, adapt them accordingly in order to continue to meet the VAT requirements in the future. However, the work required for this largely came to a standstill as a result of the pandemic and it is unclear how long the delays will last.

For this reason, the Corona Tax Assistance Act of 19 June 2020 extended the transitional provision in Section 27 para. 22a UStG on the turnover taxation of legal entities under public law relating to Section 2b UStG until 31 December 2022, due to more urgent work on the part of those entities, and in particular the municipalities, to deal with the pandemic.



## 9. EXTENSION OF THE RETROACTIVE PERIODS FOR TRANSFORMATIONS

Already with the Act to Mitigate the Consequences of the COVID 19 Pandemic in civil, insolvency and criminal proceedings of 27 March 2020, Section 17 para. 2 sentence 4 UmwG (Transformation Act) was already temporarily amended to the effect that it is sufficient for the admissibility of the registration of a merger (and, via Section 125 UmwG, also a demerger) in 2020 if the balance sheet to be taken as a basis was prepared as of a cut-off date no more than twelve (previously: eight) months prior to the filing.

With the Corona Tax Assistance Act of 19 June 2020, a synchronisation of the changes under civil law with the tax provisions for transformations was then established by means of corresponding amendments to the Reorganisation Tax Act. The tax retroactive periods in Sections 9 sentence 3, 20 para. 6 sentences 1 and 3 UmwStG were thus also temporarily extended if the application for registration or the conclusion of the contribution agreement took place in 2020.

An authorisation to issue a regulation, which was also included, allows the extension of the relief until 31 December 2021 at the latest, if and to the extent that the relief pursuant to Section 17 para. 2 sentence 4 UmwG is extended by statutory order. The corresponding ordinance on Section 27 para. 15 of the UmwStG – Corona related extension from eight to twelve months of the transformation tax periods in Section 9 sentence 3 and Section 20 para. 6 UmwStG also in 2021 - was adopted on 18 December 2020 and promulgated in the Federal Law Gazette on 23 December 2020.

## 10. VALUE ADDED TAX ON IMPORTS

The Second Corona Tax Assistance Act postponed the due date of import VAT to the 26th day of the second calendar month following the month in question. The aim of such a move is to create a positive liquidity effect for companies. In accordance with the BMF letter dated 6 October 2020, the deferral of the due date will first take effect for the deferral period beginning on 1 December 2020. For December 2020, the due date will therefore be postponed from 16 January 2021 to 26 February 2021; the same applies to the following deferral periods.

## 11. DEGRESSIVE DEPRECIATION

For 2021 as well, the tax investment incentive of decreasing-balance depreciation for wear and tear ("AfA", depreciation) with a factor of 2.5 compared to straight-line depreciation and a maximum of 25% per year for movable fixed assets will be retained. The assets must be manufactured or acquired in the assessment periods 2020 and 2021. Similarly, exceptional technical or economic wear and tear remains inadmissible; however, special depreciation, e.g. pursuant to Section 7g para. 5 EStG, may be claimed in addition to declining-balance depreciation.

## 12. EXTENDED DEADLINES FOR INVESTMENT DEDUCTION AMOUNT, REINVESTMENT RESERVES AND RESERVES FOR REPLACEMENT PURCHASES

If a taxpayer has claimed an investment deduction amount pursuant to Section 7g EStG with a view to a future acquisition, this must, according to the current legal situation, also be used for the advantaged investment by the end of the third fiscal year following the fiscal year of the respective deduction. Otherwise, it has to be reversed, which regularly triggers additional tax claims with corresponding interest. However, since in the course of the COVID 19 pandemic, acquisitions often have to be postponed for economic reasons, an investment period expiring in 2020 due to an investment deduction amount claimed in 2017 will be extended from 3 to 4 years. This means that the investment can still be made in 2021 without negative tax consequences.

In order to avoid immediate taxation of profits from the sale of certain business assets, taxpayers can set up a reserve pursuant to Section 6b EStG. This so-called reinvestment reserve must be transferred to newly acquired or manufactured replacement assets within four years or - with corresponding tax consequences - dissolved. With the Second Corona Tax Relief Act of 29 June 2020, the legislator has already temporarily extended the reinvestment periods of Section 6b EStG by one year in each case if the reserve would have had to be dissolved due to the passage of time at the end of the fiscal year ending after 29 February 2020 and before 1 January 2021. It is not yet clear whether the option to extend this deadline even further by means of a statutory instrument will be used.

Similarly, in the BMF letter dated 13 January 2021, the deadlines for the reserve for replacement or repair in the event of damage set out in R 6.6 EStR were extended by one year if they would expire in a fiscal year ending after 29 February 2020 and before 1 January 2021.

## 13. EXTENSION OF THE RESEARCH ALLOWANCE

Despite the Corona crisis, companies should be offered incentives to invest in research and development and thus in the future viability of their products. For this reason, the assessment basis (eligible expenses, in particular wages) for the tax research allowance of up to EUR 4 million per company will remain in place after 2020 (unchanged and limited until the end of 2025). An allowance rate of 25% will then be calculated on this basis, resulting in an allowance of up to EUR 1 million per year.

## F MODIFICATION OF THE INCOME TAX FORMS: ANNEX "CORONA AIDS" (ANLAGE "CORONA-HILFEN")

Due to new legal regulations, the tax forms are adjusted every year. For the assessment year 2020, a separate annex "Corona Aids" has been created due to the ongoing pandemic and its various measures. The annex supplements the annexes G (commercial income), L (agriculture and forestry) and/or S (self-employed income) of the income tax return. Irrespective of whether or not Corona immediate federal economic assistance ("Corona-Soforthilfen"), bridging aid ("Überbrückungshilfen") or comparable grants are included as taxable operating income in a profit calculation, the annex "Corona Aids" must be submitted. The Corona assistance programmes generally represent operating income and must be entered with the respective name of the business and the business tax number. As so-called real subsidies, the Corona assistance programmes are not subject to sales tax.