Freie Hansestadt Bremen

Frequently asked questions about the tax relief due to the Corona crisis

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The Federal Ministry of Finance and the supreme tax authorities of the German states had decided on various tax relief measures to relieve the taxpayers directly and not inconsiderably affected by the Corona crisis. The aim was to improve liquidity at companies that had run into economic difficulties as a result of the Corona crisis.

Competent Department

- Finanzamt Bremerhaven
- Finanzamt Bremen
- Landeshauptkasse Bremen
  Finanzkasse und Vollstreckungsstelle

Basic information

The following FAQs are intended to provide a brief overview of the details of the corresponding measures. As a rule, those affected were granted the option of deferring tax payments without interest until June 30, 2022; if an appropriate installment payment was agreed, this was possible until September 30, 2022. Likewise, the enforcement of tax debts in arrears was to be waived. This gave taxpayers a break on payments to the tax office. In addition, it was possible to reduce advance payments of income tax, corporate income tax and trade tax in a simplified procedure until June 30, 2022.

In addition, there are still numerous simplifications resulting from the Corona pandemic, such as the extended declaration deadlines. The following FAQs are intended to give you a brief overview of the details of the measures currently in force. The explanations are to be understood as general information for dealing with the questions arising in connection with the Corona crisis. Decisions in individual cases are still the responsibility of the tax

offices, local authorities or other contact persons. Please note that this document will be continuously adapted to the current situation and the issues arising.

Note: This document is continuously adapted to the issues arising (last update: March 21, 2023).

Requirements

General note: For all declarations to be submitted by the taxpayer and which are related to the Corona crisis, it applies that all information must be truthful. In this respect, nothing else applies than in the case of other tax returns. False statements are subject to penalties.

Procedure

More information

For appeals, requests for extension of deadlines, requests for adjustment of advance payments, change of address, change of bank details or other notifications to the tax office, please use the My ELSTER procedure (www.elster.de).

More information and an application form can be found at:
https://www.finanzen.bremen.de/detail.php?gsid=bremen53.c.78075.de

Of course, you can still contact the tax office by phone, fax, e-mail or by letter.

Bremen Tax Office office@fa-hb.bremen.de

Bremerhaven Tax Office office@finanzamtbremerhaven.bremen.de

State Central Tax Office office@lhk.bremen.de

Further information and an application form can be found at:
https://www.finanzen.bremen.de/detail.php?gsid=bremen53.c.78075.de

Frequently asked Questions

- **General questions about the tax relief**

  When is a taxpayer directly and not insignificantly negatively economically affected by the Corona crisis?

  Based on current developments, it can be assumed that, in principle, a very large number of sectors and persons are negatively and not insignificantly affected

economically by the effects of the Corona crisis. The tax authorities only need plausible information from the taxpayer that the Corona crisis has had a serious negative impact on his economic situation.

Do the reliefs also apply to freelancers and municipal enterprises?

Yes. The administrative instructions are not addressed to specific groups of addressees and apply in principle to all taxpayers.

Can applications for reduction of advance payments be made informally?

Yes. In principle, an informal letter to your tax office is sufficient for the application (applications cannot be made by telephone). To support the tax authorities and speed up the processing of your application, please submit your application electronically via the online tax office My ELSTER. In the application, please explain conclusively what losses (reduction of income / profit) you expect due to the Corona crisis.

In addition to submitting an application via My ELSTER, you can also use the PDF form "Antrag auf Steuererleichterungen" (Application for Tax Relief), which is available at https://www.finanzen.bremen.de/detail.php?gsid=bremen53.c.78075.de, to apply for a reduction of advance payments and deferral.

Is it possible to extend the deadline for submitting tax returns?

Tax returns for 2019:

- For taxpayers who do not seek advice from a tax advisor, income tax assistance association or other person authorised to provide advice (non-advised taxpayers), the general statutory deadline for filing tax returns for the calendar year 2019 ended on 31 July 2020
- for non-advised farmers and foresters with a business year that deviates from the calendar year, it ended on 31 January 2021. However, as this was a Sunday, the deadline did not end until the end of 1 February 2021 (Section 108(3) of the Tax Code). If you were not able to meet this deadline due to the Corona crisis, please contact your competent tax office and ask for a (subsequent) extension of the deadline.
- Taxpayers who have commissioned a tax advisor, income tax assistance association or another person authorised to provide advice to prepare the tax returns (advised taxpayers) must in principle submit the tax returns by the last day of February of the second year after the taxable period (advised farmers and foresters with a different business year by 31 July of the second year after the taxable period). The filing deadline for the calendar year 2019, which in principle expires on 28 February 2021, was extended by 6 months by law (for advised farmers and foresters with a deviating business year, the filing deadline, which in principle expires on 31 July 2021, was extended by 5 months). Tax returns for 2019 could therefore be submitted in due time until 31 August 2021 in advised cases (until 31 December 2021 in advised farmers and foresters with a deviating business year). These extended filing deadlines do not apply to tax returns that

were already required to be filed on an earlier date due to a separate order ("advance request"). They also do not apply to taxpayers who prepare their tax returns themselves.

Irrespective of this, an extension of the deadline beyond this can be applied for in individual cases at the competent tax office under the general conditions.

- In order to support the tax authorities and to speed up the processing of applications, please submit your application electronically via the online tax office My ELSTER (https://www.elster.de/eportal/formulare-leistungen/alleformulare/eingfristverl).
- The interest run of the so-called full interest pursuant to Section 233a of the German Fiscal Code (Abgabenordnung) for the 2019 taxation period generally started on 1 October 2021 instead of 1 April 2021.
- If the income from agriculture and forestry outweighs the other income at the time of the first tax assessment, the interest run of the full interest for income and corporation tax for the 2019 taxation period will only start on 1 May 2022 instead of 1 December 2021.
- These statutory extensions of the waiting periods apply equally to interest on arrears and to interest on refunds. They are - unlike the extension of the declaration periods - not limited to advised cases. However, it should be noted that, due to the decision of the Federal Constitutional Court of 8 July 2021, 1 BvR 2237/14 and 1 BvR 2422/17, no "new" interest on arrears and reimbursement will currently be assessed in terms of amount for interest periods from 1 January 2019 until a new statutory regulation is issued. If necessary, the assessment will be made after the promulgation of the retroactive amendment to the law required by the Federal Constitutional Court (reference to the BMF letter of 17 September 2021, BStBl 2021 Part I page 1759, amended by the BMF letter of 3 December 2021, BStBl 2021 Part I page 2227).
- Taxpayers who expect a higher final payment for the 2019 taxation period could (or can, if the income from agriculture and forestry outweighs the other income at the time of the first tax assessment) still file an application for the assessment of subsequent advance payments until the respective legally postponed start of the interest accrual period. In this way, interest risks, which may arise despite the above-mentioned postponed start of the interest accrual period, could or can be effectively avoided.

Tax returns for the year 2020:

As part of the ATAD Implementation Act of 25 June 2021 (Federal Law Gazette 2021 Part I page 2035), the legislator has generally extended the tax return deadlines for the year 2020 by three months. This means in detail:

- For taxpayers who do not seek advice from a tax advisor, income tax assistance association or other person authorised to provide advice (non-advised taxpayers), the general statutory filing deadline for tax returns for the calendar year 2020 did not end until 31 October 2021, but since this was a Sunday, the deadline did not end until the end of the next following working day (Section 108(3) of the Tax Code). Insofar as 1 November 2021 was a public holiday, the deadline did not end until the end of 2 November 2021. For non-advised farmers and foresters with a business year that deviates from the calendar year, the deadline did not

end until 30 April 2022. However, as this was a Saturday, the deadline did not end until the end of 2 May 2022 (section 108(3) of the Tax Code).

- Taxpayers who have commissioned a tax advisor, income tax assistance association or another person authorised to provide advice to prepare the tax returns (advised taxpayers) must submit the tax returns for 2020 by 31 May 2022 (advised farmers and foresters with a different business year by 31 October 2022). However, this does not apply to tax returns of advised taxpayers that must already be submitted on an earlier date due to a separate order ("advance request").
- Irrespective of this, an extension of the deadline beyond this can be applied for in individual cases at the competent tax office under the general conditions. In order to support the tax authorities and to speed up the processing of your application, please submit your application electronically via the online tax office My ELSTER (https://www.elster.de/eportal/formulare-leistungen/alleformulare/eingfristverl).
- Due to the 3-month extension of the declaration deadlines, the interest run of the so-called full interest pursuant to Section 233a of the German Fiscal Code (Abgabenordnung) for the 2020 taxation period will also generally begin on 1 July 2022 instead of 1 April 2022. If the income from agriculture and forestry outweighs the other income when the tax is first assessed, the interest accrual for income and corporation tax for the 2020 taxation period will only start on 1 March 2023 instead of 1 December 2022. These statutory extensions of the grace periods apply equally to interest on arrears and interest on refunds and in both advised and non-advised cases.
- Taxpayers who expect a higher final payment for the 2020 taxation period can still file an application for the determination of subsequent advance payments until the respective legally postponed start of the interest accrual period. Among other things, this effectively avoids interest risks that may arise despite the above-mentioned postponed start of the interest run.

Is restitutio in integrum possible in the event of non-compliance with a statutory time limit?

As a matter of principle, restitutio in integrum should be granted in a specific individual case if the failure to comply with a statutory deadline is due to the consequences of the Corona crisis.

Is there a late filing surcharge for a tax return that was not filed on time?

Taking into account the current situation due to the Corona crisis, the competent tax office will examine on a case-by-case basis whether it is possible to refrain from assessing a late surcharge for a tax return that was not filed on time.

Is it possible to apply for a reduction in income or corporation tax for current losses due to the Corona crisis by way of an anticipated, lump-sum loss carryback?

Yes, in principle this is possible.

If your advance payments for income or corporation tax for 2021 have already been reduced to zero euros, a lump-sum loss carryback can already be applied upon request in the annual tax assessment for 2020. This amounts to 30% of the total amount of income for the assessment period 2020 (excluding income from employment), up to a maximum of 10 million euros or 20 million euros if you are assessed jointly. For corporations, the maximum possible loss carryback is 10 million euros. The application must be made when submitting the income or corporation tax return. If the return is submitted electronically, the application can be entered in the so-called free text field.

If the loss in 2021 is not incurred in the projected amount, the tax refund from the loss carryback already taken into account in advance must be repaid (in full or pro rata) after the annual tax assessment for 2021 has been carried out. This is particularly the case if you waive the application of the loss carryback after 2020 in whole or in part.

For information on the possible reduction of advance payments, please see III. 3.

Can I apply for a higher tax refund in the annual tax assessment if I expect a higher loss carryback than the one determined on a flat-rate basis?

Yes, in principle this is possible.

Instead of a lump-sum loss carryback of 30% of the total amount of income for the assessment period 2020 (excluding income from employment), a higher amount can be deducted as a loss carryback from 2021 in the annual tax assessment. In this case, the amount must be proven in the requested amount.

Please refer to the explanations on the previous question for the application.

Is it possible to reduce the tax assessment amount for the purposes of advance trade tax payments?

Yes, it is possible to submit a (simplified) application to the tax offices for a reduction of the tax assessment amount for the purposes of advance trade tax payments.

Who can I contact with questions regarding applications for deferral, reduction of advance payments, deadline extensions or enforcement measures?

The contact persons for applications for income tax, corporate income tax, solidarity surcharge, church tax, turnover tax or trade tax are the employees in the respective competent tax offices. It is advisable to contact them as early as possible.

How can I reach the staff at the tax offices and the Federal Central Tax Office?

Please use the My ELSTER procedure (www.elster.de) for appeals, applications for extension of deadlines, applications for adjustment of advance payments, change of address, change of bank details or other notifications to the tax office. Of course, you can also continue to contact the tax office by telephone, fax, via the tax offices' functional mailboxes, e-mail, contact form on the Internet or by letter.

If you wish to visit the tax office in person, please make an appointment in advance.

Is there a delay in the processing of cases at the tax offices, for example the processing of tax returns? Are cases in which a refund can be expected processed with priority?

Unfortunately, it is not possible to make a general or precise statement about the processing time.

It depends in particular on the staffing in the tax offices and the number of tax returns received.

In order to ensure uniform and fair processing, the assessment is generally carried out according to the date of receipt of the return. Unfortunately, it is not possible to differentiate in the processing sequence, for example, according to a possible refund or subsequent payment case, because this would require a detailed examination of each individual case already upon receipt and would thus lead to duplication of work.

What impact does the Corona crisis have on enforcement proceedings?

In the case of taxpayers who are directly and not insignificantly negatively affected by the Corona crisis, enforcement measures are to be waived upon application until 30 June 2022 at the latest for claims due by 31 March 2022 (income tax, corporate income tax, solidarity surcharge, church tax, wage tax and turnover tax) (postponement of enforcement in a simplified procedure). The application must be submitted to the tax office by 31 March 2022.

An extension of this measure until 30 September 2022 is only possible if an appropriate instalment payment agreement lasting until 30 September 2022 at the latest is agreed.

In the enforcement cases concerned, the late payment surcharges forfeited by operation of law between 19 March 2020 and 30 June 2022 or, in the case of payment by instalments, no later than 30 September 2022, may also be waived after the end of the enforcement deferral.

Deferrals of enforcement for taxes that do not become due until after 31 March 2022 are only possible in the otherwise usual application procedure, subject to the provision of the necessary evidence, in particular regarding the financial circumstances.

Insolvency applications filed by the tax authorities before the start of the Corona crisis will only be withdrawn or declared settled in justified exceptional cases, as it can be assumed that the reason for insolvency already existed before the outbreak of the Corona crisis.

- ## Deferral

What general conditions apply to deferrals?

Tax deferrals are possible in the usual application procedure, subject to submission of the necessary evidence, in particular regarding financial circumstances. The general legal principles and obligations to provide evidence apply.

- ## External audit

Can external audits still be ordered and carried out?
External audits can still be ordered and carried out. The tax authorities will take appropriate account in advance of the current situation, the concerns of the companies to be audited and health aspects. This applies in particular with regard to determining the date of the audit.

Can the start of an external audit that has already been ordered be postponed?
External audits will continue to take place, if necessary in an adjusted manner. If you or members of the tax advisory professions submit a request for a postponement of the external audit with reference to the specific effects of the Corona crisis, the current situation will be duly taken into account when examining this request. This is a decision on a case-by-case basis.
If the external audit is postponed at your request, this will suspend the statute of limitations for the taxes to be audited.

Can ongoing external audits be interrupted?
External audits continue to take place, if necessary in an adjusted manner. If taxpayers or members of the tax advisory professions request an interruption of the external audit with reference to specific impediments due to the Corona crisis, the current situation will be appropriately taken into account when examining this request. This is a decision on a case-by-case basis.

Can final meetings also take place without personal presence?
Final meetings can also be held without personal presence, for example by telephone or video conference. If necessary, the final meeting can also be held at a later date. Furthermore, the audit findings can also be sent in writing; if necessary, the taxpayer can waive the right to a final meeting.

- **Wage tax**

Is the wage tax for employees automatically adjusted to the amount of the reduced salary in the case of ordered short-time work?

Yes, the employer must automatically adjust the wage tax (as a form of income tax). Only taxable wages are subject to wage tax. The short-time allowance is a wage replacement benefit that is tax-free and does not affect the wage tax deduction during the year, but only the subsequent income tax assessment procedure when determining the tax rate (progression proviso).

Are the short-time allowance and any employer contributions to it tax-free?

Short-time allowance is tax-free as a wage replacement benefit. Employer subsidies for short-time allowance, seasonal short-time allowance and transfer short-time allowance are also generally tax-free if they are paid together with the short-time allowance for wage payment periods.

  - were paid for wage payment periods that began after 29 February 2020 and ended before 1 January 2022 (compare section 3 number 28a of the Income Tax Act in the version of the Annual Tax Act 2020 of 21 December 2020 (Federal Law Gazette Part I page 3096)) and
  - did not exceed 80% of the difference between the target remuneration and the actual remuneration pursuant to section 106 of the Third Book of the German Social Code. When determining the target remuneration (gross remuneration that would have been earned if no work had been done), wages were only to be taken into account up to the amount of the applicable contribution assessment ceiling in the pension insurance. For employers in the new Länder and East Berlin the contribution assessment ceiling East applied, otherwise the contribution assessment ceiling West applied.

The allowances are to be shown by the employer together with the tax-free short-time allowance on the wage tax certificate (number 15).

Is there an obligation to submit an income tax return after receiving short-time allowance? What are the consequences?

Recipients of short-time allowance are obliged to file an income tax return if their total short-time allowance (including tax-free employer subsidies) received in the past calendar year, together with other wage replacement benefits (e.g. sick pay, parental

allowance), if applicable, exceeds 410 euros. In the assessment to be made after filing the income tax return (in the following year at the earliest), there may be additional tax demands. This is because the short-time allowance (including tax-free employer allowances) and any other wage replacement benefits are fictitiously added to the taxable income exclusively for the purpose of determining the personal tax rate (progression proviso). This results in a higher tax rate. In a second step, this higher tax rate is applied to the taxable income (without the short-time allowance, tax-free employer allowances and any other wage replacement benefits).

Since the progression proviso cannot already be taken into account when the employer deducts wage tax, but only when the tax office assesses the income, there may be additional tax demands. The concrete tax effects in individual cases depend on various factors, for example the tax class or tax class combination of the spouses or civil partners of a registered civil partnership (and, if applicable, the gross wage distribution between spouses or civil partners of a registered civil partnership) as well as on the amount of wage tax withheld, other income subject to taxation, deductible pension expenses or other deductions.

The progression proviso ensures the constitutionally required principle of taxation according to economic capacity. This is because the short-time allowance received as a wage replacement benefit increases the economic capacity. For this reason, the legislator has made the short-time allowance tax-free, but at the same time stipulated that the personal tax rate increases.

The legislator has intensively discussed the necessity of the declaration obligation in the case of the receipt of short-time allowance. No exemption - not even for a limited period of time - was decided.

By when do I have to submit my income tax return as an employee?

Tax returns for the year 2019:

If there is a duty to file an income tax return and the income tax return is not prepared by a member of the tax advisory professions, the deadline for filing the income tax return for the assessment period 2019 generally ends on 31 July 2020.

However, if an income tax assistance association, a tax advisor or another person authorised to provide advice has been commissioned to prepare the income tax return, the income tax return for the 2019 assessment period must in principle be submitted to the competent tax office of the place of residence by 31 August 2021.

Tax returns for the year 2020:

If there is an obligation to file an income tax return and if the income tax return is not prepared by a member of the tax advisory professions, the deadline for filing the income tax return for the 2020 assessment period generally ends on 31 October 2021. However, as this was a Sunday, the deadline only ended with the expiry of the next following working day (Section 108(3) of the Tax Code). Insofar as 1 November 2021 was a public holiday, the deadline only ended at the end of 2 November 2021.

However, if an income tax assistance association, a tax advisor or another person authorised to provide advice was commissioned to prepare the income tax return, the income tax return for the 2020 assessment period must be submitted to the competent tax office of the place of residence by 31 May 2022.

As an employer, can I request an extension of the deadline for filing the monthly or quarterly income tax return due to the Corona crisis?

Employers can apply for an extension of the deadlines for submitting monthly or quarterly wage tax returns during the Corona crisis in individual cases in accordance with section 109, paragraph 1 of the German Fiscal Code (AO), insofar as they themselves or the person entrusted by them with payroll accounting and wage tax returns are demonstrably prevented from submitting the wage tax returns on time through no fault of their own. In this case, the extension of the deadline shall be a maximum of two months. The decision in the individual case is made by the locally competent tax office.

Can I claim expenses for a home office if I normally have an office workplace in the company but now have to work at home due to corona?

In principle, expenses for the home office are not deductible. However, the deduction is permissible if the home office forms the centre of the entire business and professional activity (then full deduction of the expenses) or if no other workplace is available for the business activity (then deduction of up to 1,250 euros/year). The question of the deductibility of such expenses can only be clarified in the context of the assessment by the competent tax office.

For the years 2020 and 2021, a flat-rate amount of 5 euros -maximum 600 euros per year- can be deducted for each day on which the taxpayer is exclusively engaged in business or professional activities at home (so-called home office flat rate). In the absence of journeys between home and place of activity, a deduction of travel expenses (by means of a commuting allowance or travel expenses) is therefore not possible on these days.

On the days on which the taxpayer is active at home for business or professional purposes and also visits another place of activity, he can claim the lump-sum distance allowance or the resulting travel expenses. The home office flat rate cannot be claimed for these days, as the taxpayer did not work exclusively at home.

The home office flat rate can be claimed both if the requirements for a home office are not met (e.g. work at the kitchen table) and if the requirements are met and the taxpayer does not want to calculate the expenses individually.

How do I determine the travel expenses that can be deducted as income-related expenses if I have a season ticket for local public transport and work in my home office?

The expenses actually incurred for a season ticket for the use of public transport for journeys between home and the first place of work can be claimed as income-related expenses insofar as they exceed the total distance allowance determined in the calendar year. This also applies if the employee has purchased a time ticket in anticipation of regular use for the journey to the first place of work, but is then unable to use the time ticket to the planned extent due to the activity in the home office. These expenses do not have to be allocated to individual working days. Time tickets in this sense are, for example, annual and monthly tickets.

Can the expenses for a time ticket for local public transport be deducted as income-related expenses in addition to the home office flat rate?

The home office flat rate can only be deducted for those days on which the taxpayer worked exclusively in the home office. In the absence of journeys between home and place of activity, a deduction of travel expenses (in the form of the distance allowance or travel expenses) for these days is generally not possible. However, the expenses for a season ticket for public transport, which was purchased in anticipation of use for the way to work, are deductible independently of this, insofar as they exceed the total distance allowance determined in the calendar year. Time tickets in this sense are, for example, annual and monthly tickets.

Can the employer reimburse extraordinary care services that arise due to the Corona crisis for relatives and children in need of care tax-free?

Yes. In order to improve the reconciliation of family and work, employer benefits paid in addition to the wages owed anyway can remain tax-free up to an amount of 600 euros per calendar year per employee. The additional need for care must arise from the compelling and work-related short-term care of a child under 14 years of age. In the case of disabled children who are unable to support themselves and whose

disability occurred before they reached the age of 25, this also applies if the child is 14 or older. Beneficiary care services also exist if the employee looks after a relative in need of care, even if this takes place in the employee's private household.

The existence of an additional need for care is assumed if the employee works at extraordinary working hours due to the Corona crisis or if the regular care of children has ceased as a result of the closure of schools and care facilities (for example, day-care centres, company kindergartens, school after-school care) ordered to contain the Corona crisis.

Care to be organised at short notice is to be assumed until the respective care facilities can resume their regular operation.

In the case of cash benefits by the employer, the employee must have incurred corresponding expenses. The tax-exempt benefits must be recorded in the payroll account.

Is there relief for marginally paid employees (so-called mini-jobs) during the Corona crisis in order to react flexibly to an increased workload?

A low-paid job (so-called mini-job) exists if the regular monthly pay does not exceed 450 euros. Low-paid employees are exempt from social insurance with the exception of accident and pension insurance; they can be exempted from the obligation to pay pension insurance. As a rule, the wage is taxed at a flat rate of 2 %.

Social security law offers leeway for mini-jobbers to work extra hours during the Corona crisis. If the monthly 450-euro limit is exceeded only occasionally and not foreseeably, it is generally still considered marginal employment, even if the remuneration limit of 5,400 euros, which is decisive for one year, is exceeded. In principle, a period of up to three months within a time year is considered occasional. In an announcement of 30 March 2020, the umbrella organisations of social security have determined that, analogous to the temporary increase of the time limits for short-term employment with the social protection package, an occasional exceeding of the remuneration limit for mini-jobs is to be assumed for the calendar months March to October 2020 if there is an unforeseeable exceeding in a maximum of five calendar months within a time year. Insofar, low-paid employees can work extra hours in up to five months due to the Corona crisis and thereby exceed the monthly remuneration limit of 450 euros; the status as a mini-jobber then remains.

Due to the ongoing Corona crisis, the time limits for short-term employment were temporarily raised and an occasional exceeding of the earnings limit for 450-euro

mini-jobs was again permitted (Fourth Act Amending the Sea Fisheries Act of 26 May 2021, Federal Law Gazette 2021 Part I page 1170).

The time limits for short-term employment were temporarily increased from 3 months or 70 working days to 4 months or 102 working days from 1 March 2021 to 31 October 2021.

Analogous to the temporary increase of the time limits for short-term employment, an occasional exceeding of the earnings limit for 450-euro mini-jobs can occur up to four times within a time year for this transitional period.

However, the possibility of exceeding the earnings limit four times only applies to employment periods after the transitional regulation comes into force, i.e. from 1 June 2021. There is no change for employment periods prior to this; the possibility of exceeding the earnings limit three times remains.

Further information can be found on the website of the Minijob-Zentrale (www.minijob-zentrale.de).

How are public subsidies for the accommodation and meals of foreign border commuters, for example Polish border commuters who cannot return home every day due to border closures or quarantine regulations, treated for tax purposes?

The following applies to taxation in Germany: The subsidies or daily allowances paid from public funds as a result of the Corona crisis, which an employer receives and pays to his employees (foreign border commuters) to finance the additional expenses they incur for accommodation and meals as a result of the border closure or for other reasons, do not constitute wages within the meaning of Section 19 (1) of the Income Tax Act and are therefore not subject to wage taxation.

Are activities of an employee that are eligible for tax exemption under the Auslandstätigkeitserlass (ATE) even if, due to the Corona crisis, an activity planned abroad within the meaning of the ATE cannot be carried out or continued? What is the effect on tax exemption under the ATE if the beneficiary activity is instead carried out or continued in Germany?

According to the ATE, the tax exemption of beneficiary activities requires, among other things, that the respective activity is carried out for an uninterrupted period of at least three months in a foreign state. However, this only applies if Germany has not concluded an agreement with the state concerned to avoid double taxation, which includes income from non-self-employed work.

If an activity abroad that is eligible under the ATE and planned for at least three months was interrupted or terminated due to the Corona crisis, the failure to reach the minimum duration of three months is not detrimental. In these cases, the tax exemption of the salary applies to the foreign assignment that actually lasts less than three months.

If, on the other hand, an activity intended to be carried out abroad is carried out or continued in Germany because of the Corona Crisis, the salary attributable to this is not tax-exempt under the ATE.

Does the employer's assumption of the cost of Covid 19 tests result in remuneration?

If the employer assumes the costs of Covid 19 tests (rapid tests, PCR and antibody tests), it is not objectionable for reasons of simplification to assume that the employer's interest is predominantly his own. The assumption of costs is not remuneration for work.

Does the provision of respiratory protection masks for professional use by the employer result in remuneration for the employee?

No. If the employer provides the protective masks to his employees for professional use, the employer's own business interest is to be assumed. This also applies for VAT purposes (compare section 1.8 paragraph 4 of the VAT Application Decree).

Does a Corona vaccination by the employer for his employee, his dependents or his life partner constitute remuneration for work?

No. These services do not constitute wages.

- **Tax-free allowances and benefits for employees up to € 1,500**

Can any payment by the employer in the period from 1 March to 31 March 2022 be considered as aid and assistance due to the Corona crisis?

According to section 3 number 11a of the Income Tax Act in the version of the Withholding Tax Relief Modernisation Act of 2 June 2021 (Federal Law Gazette 2021 Part I page 1259), employers may pay their employees aid and support up to a total amount of €1,500 tax-free in the period from 1 March 2020 to 31 March 2022. The prerequisite of the aforementioned regulation is that the allowances and benefits are paid to alleviate the additional burden caused by the Corona crisis and in addition to the wages owed anyway.

The tax exemption is thus excluded in particular in the context of salary waivers or salary conversions. The conditions under which a benefit is provided in addition to the salary owed anyway are set out in section 8(4) of the Income Tax Act as amended by the Annual Tax Act 2020 of 21 December 2020 (Federal Law Gazette 2020 Part I page 3096).

Can employers grant their employees a tax-free amount of 1,500 euros, i.e. a total of 4,500 euros, both in 2020, 2021 or in the first quarter of 2022?

No, the tax-free amount of a maximum of 1,500 euros remains unchanged. The extension of the deadline in § 3 number 11a of the Income Tax Act in the version of the Withholding Tax Relief Modernisation Act of 2 June 2021 (Federal Law Gazette 2021 Part I page 1259) does not mean that in 2021 or in the first quarter of 2022 another 1,500 euros could be paid out tax-free in addition to an amount of 1,500 euros granted tax-free in 2020. Only the period for granting the amount is stretched.

Can employers convert pre-Corona customary or agreed special payments into tax-free benefits under section 3 number 11a of the Income Tax Act?

For the benefits to be tax-exempt, it is necessary that it is evident from the contractual agreements between the employer and the employee or other agreements or declarations that the benefits are tax-exempt aid and assistance to alleviate the additional burden of the Corona Crisis and that the other requirements of d Section 3 Number 11a of the Income Tax Act are met.

An agreement on special payments made before 1 March 2020 without a reference to the Corona crisis cannot be subsequently converted into a tax-free aid or support to mitigate the additional burden of the Corona crisis (for example, if a provision was made for the special payment in the balance sheet as at 31 December 2019 or the employees were already informed in February 2020 that a special payment would be granted in March 2020). The relevant date is 1 March 2020, as only from this date can the inducement lie in the mitigation of the additional burdens caused by the Corona crisis. Employer benefits based on a contractual agreement or other legal obligation entered into before 1 March 2020 cannot be granted as tax-exempt aid or support within the meaning of section 3 number 11a of the Income Tax Act.

Provided that there were no contractual agreements or other legal obligations on the part of the employer to grant a special payment prior to 1 March 2020, a tax-free allowance or support to mitigate the additional burden of the Corona crisis may also be granted instead of the special payment, subject to compliance with the requirements of section 3 number 11a of the Income Tax Act.

Can tax-free allowances and benefits be regulated in collective agreements in addition to the wages owed anyway?

The question must be answered in a generally valid manner irrespective of § 3 number 11a of the Income Tax Act:

A tax-free allowance or support in addition to the salary owed anyway within the meaning of section 3 number 11a of the Income Tax Act may also be agreed or stipulated in a collective agreement (compare also section 8 paragraph 4 of the Income Tax Act in the version of the Annual Tax Act 2020 of 21 December 2020 (Federal Law Gazette 2020 Part I page 3096). Partial amounts of a Corona allowance or support may also be determined and paid in several collective agreements, for example from 2020, from 2021 or the first quarter of 2022, as long as the tax exemption for this is limited to a total of 1,500 euros.

Can amounts also be paid tax-free if (if applicable, exclusively) short-time allowance was paid in the same pay period / in a previous pay period since 1 March 2020 and the benefit is not designated as a "top-up" of short-time allowance? Can amounts also be tax-free if they are granted indiscriminately to all employees and only some of the employees receive short-time allowance?

Employers are free to provide tax-exempt subsidies and support to mitigate the additional burden of the Corona crisis instead of an employer-side subsidy to the short-time allowance, subject to the requirements of section 3 number 11a of the Income Tax Act.

Tax-free allowances and support within the meaning of section 3 number 11a of the Income Tax Act may be paid to all employees up to an amount of 1,500 euros. This applies regardless of the extent of employment (part-time employment) and whether and to what extent short-time allowance is paid.

However, it is necessary that it is recognisable from the contractual agreements between employer and employee or other agreements or declarations that it is a matter of tax-free aid and support to mitigate the additional burden of the Corona crisis and that the other requirements of section 3 number 11a of the Income Tax Act are met.

The employer regularly makes a voluntary special payment or a voluntary recreational allowance. In 2020, a Corona allowance has been granted instead of the voluntary special payment/recovery allowance. Is this tax-free?

For the benefits to be tax-exempt, it is necessary that it is evident from the contractual agreements between the employer and the employee or other agreements or declarations that the benefits are tax-exempt aid and assistance to alleviate the additional burden of the Corona crisis and that the other requirements of section 3 number 11a of the Income Tax Act are met.

An agreement on special payments made before 1 March 2020 without a reference to the Corona crisis cannot be subsequently converted into a tax-free aid or support to mitigate the additional burden of the Corona crisis (for example, if a provision was made for the special payment in the balance sheet as at 31 December 2019 or the employees were already informed in February 2020 that a special payment would be granted in March 2020). The relevant date is 1 March 2020, as only from this date can the inducement lie in the mitigation of the additional burdens caused by the Corona crisis. Employer benefits based on a contractual agreement or other legal obligation entered into before 1 March 2020 cannot be granted as tax-exempt aid or support within the meaning of section 3 number 11a of the Income Tax Act.

Provided that there were no contractual agreements or other legal obligations on the part of the employer to grant a special payment prior to 1 March 2020, a tax-free allowance or support to mitigate the additional burden of the Corona crisis may also be granted instead of the special payment, subject to compliance with the requirements of n Section 3 Number 11a of the Income Tax Act.

Are benefits that were already agreed or intended to be paid before 1 March 2020 eligible?

For the benefits to be tax-exempt, it is necessary that it is recognisable from the contractual agreements between the employer and the employee or other agreements or declarations that the benefits are tax-exempt allowances and support to mitigate the additional burden of the Corona crisis and that the other requirements of § 3 number 11a of the Income Tax Act are met.

An agreement on special payments made before 1 March 2020 without a reference to the Corona crisis cannot be subsequently converted into a tax-free aid or support to mitigate the additional burden of the Corona crisis (for example, if a provision was made for the special payment in the balance sheet as at 31 December 2019 or the employees were already informed in February 2020 that a special payment would be granted in March 2020). The relevant date is 1 March 2020, as only from this date can the inducement lie in the mitigation of the additional burdens caused by the Corona crisis. Employer benefits based on a contractual agreement or other legal obligation

entered into before 1 March 2020 cannot be granted as tax-exempt aid or support within the meaning of section 3 number 11a of the Income Tax Act.

Provided that there were no contractual agreements or other legal obligations on the part of the employer to grant a special payment prior to 1 March 2020, a tax-free allowance or support to mitigate the additional burden of the Corona crisis may also be granted instead of the special payment, subject to compliance with the requirements of section 3 number 11a of the Income Tax Act.

Does § 3 number 11a of the Income Tax Act apply to employees of public employers in the same way as to employees of private employers?

Section 3(11a) of the Income Tax Act does not distinguish between benefits provided by public or private employers. All employers - public as well as private - can grant tax-free allowances and support to mitigate the additional burden of the Corona crisis in the same way, provided that the conditions listed therein are met.

Do performance bonuses for work performed in 2019 fall within the scope of § 3 number 11a of the Income Tax Act?

As a rule, performance bonuses are based on existing employment contract or service agreements. Conversion or reclassification into a tax-free allowance or support to mitigate the additional burden of the Corona crisis within the meaning of section 3 number 11a of the Income Tax Act is generally not possible.

Can employers provide tax-free allowances and support to mitigate the additional burden of the Corona crisis to employees who, in return, are reduced overtime worked to which there is no entitlement to payment?

It is necessary that the contractual agreements between the employer and the employee or other agreements or declarations make it clear that these are tax-free subsidies and support to alleviate the additional burden of the Corona crisis. In cases where there was no entitlement to compensation for overtime before 1 March 2020 (i.e. only the possibility of compensatory time off was available), the granting of a tax-free allowance or support to mitigate the additional burden of the Corona crisis within the meaning of section 3 number 11a of the Income Tax Act is favoured if the employee waives compensatory time off for overtime or overtime is reduced in return. The condition of a grant "in addition to the wages owed anyway" is fulfilled in these cases.

Can tax-free allowances and benefits also be paid to marginally paid employees (so-called mini-jobbers)? Is an appropriateness test to be carried out?

The granting of a tax-free allowance or support within the meaning of section 3 number 11a of the Income Tax Act of up to 1,500 euros is also possible to marginally paid employees (so-called mini-jobbers). According to section 1, paragraph 1, sentence 1, number 1 of the Social Security Remuneration Ordinance, these tax-free allowances or support do not count as remuneration subject to social security contributions. An appropriateness test is not to be carried out. However, in the case of employment relationships between close relatives, the granting of such an allowance or support must also be customary between strangers (so-called arm's length principle).

Is the tax-exempt amount of 1,500 euros under section 3 number 11a of the Income Tax Act a tax-free amount or an exemption limit?

It is a tax-free allowance. Employers are also free to make higher special payments. However, according to § 3 number 11a of the Income Tax Act, allowances and support can only remain tax-free up to an amount of 1,500 Euros. Payments above this amount are generally subject to tax and contributions.

Can a shareholder-director also claim tax exemption?

In the case of a shareholder-director of a corporation, the payment of tax-exempt allowances and support within the meaning of § 3 number 11a of the Income Tax Act can lead to a hidden distribution of profits. In this case, tax exemption is ruled out. A hidden profit distribution exists if there are no convincing business reasons for the payment, but there is an inducement by the corporate relationship (compare note 8.5 Inducement by the corporate relationship of the Corporate Income Tax Manual 2015). As in the case of employees without shareholder status, it must be shown that the aid and support is tax-free and is intended to mitigate the additional burden of the Corona crisis. The other requirements of § 3 number 11a of the Income Tax Act must be met.

Can the tax-free maximum amount of 1,500 euros be exhausted separately for each employment relationship or, if necessary, is it necessary to check whether a payment has already been made from other employment relationships?

Tax-free allowances and support within the meaning of § 3 number 11a of the Income Tax Act can be paid separately for each employment relationship. The amount of up to 1,500 euros in total can therefore be exhausted per employment relationship.

However, in cases of universal succession under civil law and in the case of transfers of undertakings pursuant to section 613a of the Civil Code (for example, in the case of the contribution of a sole proprietorship to a corporation), it is not to be assumed that there is a further employment relationship. Here, under civil law, the new business

owner merely enters into the rights and obligations arising from the employment relationships existing at the time of the transfer. In these cases, the tax-free maximum amount cannot be claimed more than once.

In addition, it is necessary that it is recognisable from the contractual agreements between employer and employee or other agreements or declarations that it is a matter of tax-free aid and support to mitigate the additional burden of the Corona crisis. The other requirements of section 3 number 11a of the Income Tax Act must be met.

If there are two or more consecutive employment relationships, can the tax exemption be claimed for each employment relationship?

Tax-exempt allowances and support within the meaning of § 3 number 11a of the Income Tax Act can also be claimed for successive employment relationships. The total amount of up to 1,500 euros can be used per employment relationship; however, this does not apply to several employment relationships in a calendar year with one and the same employer.

It is necessary that it is recognisable from the contractual agreements between employer and employee or other agreements or declarations that it is a matter of tax-free aid and support to mitigate the additional burden of the Corona crisis. The other requirements of section 3 number 11a of the Income Tax Act must be met.

Due to the Corona crisis, the employment relationship is terminated. In the termination agreement (severance agreement), the payment of a Corona allowance of 1,500 euros is agreed. Is this tax-free?

Employers are free to provide tax-exempt allowances and support in lieu of a customary severance payment due to loss of employment, subject to the requirements of section 3 number 11a of the Income Tax Act.

However, it is necessary that the contractual agreements between the employer and the employee or other agreements or declarations make it clear that the aid and support is tax-free and is intended to alleviate the additional burden of the Corona crisis. The other requirements of section 3 number 11a of the Income Tax Act must be met. In addition, the Corona-related impact on the employee must be justified during the period in which the employment relationship existed, so that severance payments relating to employment relationships terminated before 1 March 2020 cannot be reclassified or converted into tax-free aid or support.

Is the tax-free payment in the amount of 1,500 euros harmless for the lump sum under Section 40a(2) of the Income Tax Act?

A lump sum payment according to § 40a paragraph 2 of the Income Tax Act is possible in addition to or in addition to the tax exemption within the meaning of § 3 number 11a of the Income Tax Act.

How is the connection to the Corona crisis to be proven or recorded in the payroll account?

Tax-exempt benefits must be recorded in the payroll account (§ 4 paragraph 2 number 4 of the Wage Tax Implementation Ordinance) so that they are recognisable as such during the external wage tax audit and the legal basis for the payment can be checked if necessary. The connection of the allowances and support with the Corona crisis may result from individual contractual agreements between employer and employee, from similar agreements or from declarations by the employer. Similar agreements between employer and employee may be, for example, collective agreements or separate company agreements. Individual pay slips or transfer vouchers in which the Corona special payments are shown as such are recognised as a declaration by the employer, for example.

If, exceptionally, there is no obligation to keep wage records (for example, in the case of a private employer's participation in the household cheque procedure), a simple proof of payment is sufficient.

By submitting the proofs, it is possible to quickly check whether and to what extent the requirements of section 3 number 11a of the Income Tax Act have been met.

Is the tax-exempt allowance/support to be shown in the wage tax certificate and stated in the income tax return?

The tax-exempt aid or support to mitigate the additional burden of the Corona crisis pursuant to § 3 number 11a of the Income Tax Act is not to be shown on the wage tax certificate and does not have to be declared in the income tax return.

Are the tax-free allowances and support subject to the progression proviso?

The tax-exempt allowances or benefits according to § 3 number 11a of the Income Tax Act are not subject to the progression proviso.

How do the BMF letter of 9 April 2020 and § 3 number 11a of the Income Tax Act relate to each other?

According to § 3 number 11a of the Income Tax Act in the version of the Withholding Tax Relief Modernisation Act of 2 June 2021 (Federal Law Gazette 2021 Part I page 1259), employers may pay their employees allowances and benefits up to an amount

of 1,500 euros tax-free in the period from 1 March 2020 to 31 March 2022. This statutory regulation of the tax exemption of allowances and benefits to mitigate the additional burden of the Corona crisis takes over the statements previously contained in the BMF letter of 9 April 2020 and secures them by law. Consequently, there is no competitive relationship between § 3 number 11a of the Income Tax Act and the aforementioned BMF letter. Employers may thus grant their employees allowances and support to mitigate the additional burden of the Corona crisis tax-free in the period from 1 March 2020 to 31 March 2022 up to a maximum total amount of 1,500 euros. The BMF letter of 9 April 2020 has since been revised (cf. BMF letter of 26 October 2020, Federal Tax Gazette 2020 Part I page 1227).

- **Tax-free "Corona care bonus" for employees up to 4,500 euros**

- **Border crossers**

What are the tax consequences of the "home office" for employees who live in one state and normally commute across the border to another state on workdays in order to pursue their activities there and then return to their place of residence (so-called cross-border commuters)?
The recommendation to stay at home, if possible, was followed by many citizens. This poses challenges for employees who normally commute daily from their place of residence to work in another state. However, if they increasingly work from home ("home office") due to official recommendations or orders, instructions from their employer, or the closing of the border, this can also trigger tax consequences.If, however, they increasingly work from home ("home office") due to recommendations or instructions from the authorities or instructions from their employer or due to the closing of the border, this may also have tax consequences, for example if, according to the underlying regulations of a double taxation agreement (DTA) between the two countries concerned, the exceeding of a certain number of days on which the actual country of activity is not visited leads to a partial change in the right of taxation.
This issue is not regulated uniformly in the DTAs concluded by Germany, because there are different special regulations with various neighboring countries.
Under the DTA with France, for example, the additional "home office" days for employees in the border area do not change the intended division of taxation rights. This also applies to cross-border commuters under the DTA with Switzerland, as long as, based on the calendar year, there is still a minimum number of commutes (i.e., back and forth) across the border (one per week or five per month). As a precautionary measure, the Federal Ministry of Finance has agreed with Switzerland to impute commuting movements during the measures to combat the Corona crisis. With regard to DTAs with other countries, such as Luxembourg, the Netherlands,

Austria and Belgium and Poland, on the other hand, an increased level of "home office" days may lead to a change in the allocation of taxation rights and thus to a change in the tax situation of the employees concerned. The same applies with respect to France for employees if they do not live in the border area and with respect to Switzerland for employees who do not fulfill the cross-border commuter status. The Federal Ministry of Finance has already been able to reach agreements with these states to prevent a change in the allocation of taxation rights due to a higher number of "home office" days resulting from the Corona crisis. An agreement has been reached with Luxembourg, Austria, Poland and Switzerland that the "home office" agreements also apply to public sector employees.

- **Operating sites**

Do temporary interruptions in construction and assembly work have tax consequences for foreign (construction) companies and their employees in Germany as a result of the Corona crisis, for example because a domestic permanent establishment is established with the consequence of tax obligations in Germany as a result of exceeding the 6-month deadline for establishing a permanent establishment under Section 12 of the German Fiscal Code or the longer deadline under the permanent establishment article of a double taxation agreement?

If construction and assembly work by foreign (construction) companies is interrupted prior to completion for reasons that are not part of the company's operations, for example due to border closures or work stoppages as a result of the Corona crisis, this alone should not result in any tax consequences for the companies and their employees with regard to the establishment of a permanent establishment. Therefore, interruption periods of construction and assembly work caused by the Corona crisis are not counted for the calculation of the domestic and treaty-based permanent establishment establishment deadlines for construction and assembly work (suspension of deadlines). This additionally requires that

- the interruption in the specific case is at least two weeks,
- the employees or agents of the company are withdrawn from or leave the assembly site during the interruption period, and
- it can be ensured that the corresponding income is taxed, for example, in the country of residence of the company or the employees, if a permanent establishment is not established for the company in Germany due to the interruption of the period. For this purpose, spontaneous information can be transmitted to the tax administration of the other contracting state.
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Did the work performed by workers in the home office during the Corona pandemic give rise to a permanent establishment of the company across borders?
If a worker only worked temporarily in a home office due to the pandemic, this home

office activity did not regularly create a new permanent establishment for the employer. This applies regardless of the employee's function in the company, the scope of his or her authority or the type of activity he or she performs. Due to the exceptional nature of this situation, the employer's instructions resulting from the pandemic to work temporarily in the home office cannot be understood to mean that the employer gained power of disposal over correspondingly used premises of the employee or that an "ordinary" exercise of activities within the meaning of Article 5(5) OECD Model Convention took place there.
This interpretation is to be applied to situations that occurred in the period from March 11, 2020 to June 30, 2022.
This does not affect any employment contract provisions regarding regular home office activities that apply irrespective of the Corona pandemic.

- **Measures in the non-profit sector and for social engagement in the Corona crisis.**

How are donations taken into account for tax purposes? Does the Corona crisis change anything in terms of processes, procedures and evidence?

Donations are voluntary contributions in kind or in cash that are made without consideration to promote tax-privileged purposes. They must also be made to a tax-privileged recipient. This recipient is usually a tax-privileged corporation (e.g. a non-profit association or a non-profit foundation) or a public corporation (e.g. a hospital).

Donations to natural persons are not tax deductible.

For a (special expense) deduction in the tax return, a donation receipt is generally required, which is to be issued by the tax-privileged recipient of the donation. If certain tax-privileged corporations have set up special donation accounts to help those affected by the Corona crisis with the funds collected there, then the donors can take advantage of simplifications until 31 December 2022. If donations are made to these special accounts, the receipt from the bank (e.g. account statement, direct debit receipt or PC printout for online banking) is sufficient as proof of the donation for the tax office.

How are donations in kind (for example, respirators) from one's own company to hospitals or supermarkets for the protection of employees working there treated for tax purposes if it is a high-profile fundraising campaign (for example, by supporting the mayor)?

Such donations in the form of non-cash benefits from the company can be claimed as business expenses for tax purposes if they bring economic benefits for this company

(so-called "sponsoring"). The tax authorities already assume an "economic advantage" if, for example, the media draw attention to the donations through reporting. In this case, the more favourable deduction of business expenses takes precedence over tax consideration as a donation.

Details on the VAT implications of such donations can be found later in this section.

How are donations to a - possibly also tax-privileged - business partner treated for tax purposes?

A donation in kind or a donation of benefits and services (but not a donation of money) from the business assets of a company can also be claimed as a business expense for tax purposes if it is made by 31 December 2022 to business partners directly and not insignificantly damaged by the Corona crisis or to companies and institutions involved in the management of the Corona crisis, such as hospitals.

Apart from that, donations (in cash or in kind) to tax-privileged corporations can be claimed as donations for tax purposes as usual.

Details on the VAT implications of such donations can be found later in this section.

Does the provision of medically trained staff and material to institutions free of charge have VAT consequences if they provide an indispensable service in dealing with the Corona crisis?

If material or personnel from a company are provided free of charge, this so-called free transfer of value could be subject to VAT.

However, if companies provide medical supplies (e.g. protective clothing, protective masks, medicines, disinfectants, respirators, etc.) or personnel for medical purposes free of charge, this could be subject to VAT.) or personnel for medical purposes are made available free of charge to institutions that provide an indispensable service in dealing with the Corona crisis (this includes in particular hospitals, clinics, doctors' surgeries, rescue services, nursing and social services, homes for the elderly and nursing homes as well as other public institutions such as the police and fire brigade), then the taxation of a free gift of value is waived for a limited period until 31 December 2021.

If entrepreneurs already intend to pass on the medical supplies free of charge when purchasing them or - in the case of manufacture - their components, an additional corresponding input tax deduction will be granted by way of exception under the above-mentioned conditions and the further requirements of Section 15 of the Value Added Tax Act, also for a limited period until 31 December 2021. The following free

transfer of value shall not be taxed in accordance with the preceding paragraph in an equitable manner. This also applies in cases in which entrepreneurs have been provided with staff against payment and they make them available to the aforementioned institutions for use for medical purposes.

May any tax-privileged corporation (for example, non-profit associations or foundations) solicit donations in connection with the Corona crisis regardless of their actual statutory purpose?

All tax-privileged corporations can conduct fundraising campaigns to help those affected by the Corona crisis. The tax offices will not object if, in the period until 31 December 2021, donations are solicited for this purpose not stated in the statutes of the association or foundation, confirmed with a donation receipt and used for this purpose. The donation receipt that the donor receives from the association or foundation must contain a reference to the special campaign "Help for people affected by the Corona crisis".

However, it is a prerequisite that the tax-privileged corporation uses the donations only for non-profit or charitable purposes. This means, for example, that support services for companies, self-employed persons or corresponding aid funds of the municipalities financed by donations are not eligible.

Moreover, the donations can also be forwarded to tax-privileged corporations or legal entities under public law that contribute to helping those affected by the Corona crisis without affecting their own charitable status. For example, a football club can start a fundraising campaign for those affected by the Corona crisis and forward the donations raised in the course of this special campaign to a tax-privileged hospital.

Can tax-privileged entities (e.g. non-profit associations or foundations) work outside their statutory purposes to address the impact of the Corona crisis (e.g. by providing purchasing assistance)?

All tax-exempt entities are allowed to engage in activities to address the impact of the Corona crisis, regardless of their statutory purposes, until 31 December 2022. This commitment is not a threat to their own charitable status. The tax office will not draw any negative consequences for the non-profit status from these non-statutory activities.

For example, a non-profit association can take on shopping assistance for elderly, particularly vulnerable persons or for persons in need of help in domestic quarantine. The association's funds can also be used for this purpose. Similarly, a non-profit research organisation can distribute existing protective masks free of charge to

persons at risk or affected. In both cases, a prior amendment of the statutes is not required in this respect.

On the other hand, support services that do not pursue non-profit or charitable purposes, for example to commercial enterprises, self-employed persons or corresponding aid funds of the municipalities that were particularly affected by the Corona crisis, are not eligible.

Details on support services to artists and solo self-employed persons can be found later in this section.

How are activities of tax-privileged corporations (e.g. non-profit associations or foundations) that are carried out in connection with the Corona crisis to be treated in return for payment?

Hospitals or even old people's and nursing homes currently need help and support in every respect. Many tax-privileged corporations therefore help with personnel, premises, material resources or other services necessary to cope with the effects of the Corona crisis and receive remuneration for this. From a tax point of view, this economic activity is actually only favoured if a corresponding purpose, such as public health and public health care or the promotion of the prevention and control of communicable diseases, is stated in the articles of association. In view of the effects of the Corona crisis, the tax authorities will not object until 31 December 2022 if such a purpose is not listed in the articles of association of tax-privileged corporations involved in the management of the Corona crisis.

Irrespective of whether the corporation has actually included a corresponding tax-privileged purpose, such as the promotion of public health or the promotion of charitable purposes, in its articles of association, paid activities to cope with the effects of the Corona crisis can be allocated to the tax-privileged special purpose business within the meaning of Section 65 of the German Fiscal Code for both income tax and turnover tax purposes until 31 December 2022. This is the case, for example, if a non-profit research institution provides a hospital with existing protective masks in return for payment. The income from this activity can then be allocated to the tax-privileged special-purpose operation.

These VAT-taxable transfers of material resources and premises as well as of employees are exempt from VAT under the further conditions of § 4 numbers 14, 16, 18, 23 and 25 of the VAT Act as closely related turnover of the VAT-privileged institutions. The tax exemption only applies to transfers between entities whose transactions are exempt under the same provision, for example, transfers between the

entities referred to in section 4 number 16 of the VAT Act. Recognition as a non-profit organisation is not required for the application of the aforementioned VAT exemptions.

In addition, in the assessment periods 2020, 2021 and 2022, for reasons of equity, services provided in direct connection with the containment and control of the Covid 19 pandemic (for example, corona smears as well as the operation of a vaccination centre) by entities under public law or other entities that do not systematically seek to make a profit may be regarded as services closely related to social welfare and social security and treated as VAT-exempt under section 4 number 18 of the VAT Act. Insofar as an entrepreneur relies on the VAT exemption, the input tax deduction is excluded for related input services.

A tax-privileged corporation (for example a non-profit association or a foundation) has accumulated funds from previous years and is now unable to spend them in 2020, 2021 or 2022 due to the Corona crisis. Does it now lose its non-profit status?

The law stipulates that funds must be used promptly and thus at the latest in the two years following the inflow for the tax-privileged statutory purposes. If the tax authorities determine that the association has not used its funds in a timely manner, the tax office will set the association an appropriate deadline for the use of funds. In view of the current situation, the deadline will in any case take into account the effects of the Corona crisis. The tax-privileged corporations will thus be given more time than usual to use the accumulated funds.

The funds actually earmarked for use for a specific purpose in 2020, 2021 or 2022 do not therefore have to be used in some other way just so that the non-profit status is maintained.

May reserves of tax-privileged corporations (for example, non-profit associations or non-profit foundations) that have been set up for other purposes in accordance with § 62 of the German Fiscal Code (Abgabenordnung) be dissolved in order to alleviate an economic emergency that has arisen due to the Corona crisis?

Yes. A tax-privileged corporation may dissolve and use reserves formed in the past, such as for the replacement of assets, until 31 December 2022 without jeopardising its non-profit status in order to financially mitigate the negative effects of the Corona crisis.

May a tax-privileged corporation (for example a non-profit association or a foundation) temporarily financially support its economic business operations with collected donations or membership fees?

The effects of the Corona crisis basically affect all economically active persons. This can also include tax-privileged corporations that operate "on the market" (for example with a fan shop, a cafeteria or a club restaurant). A tax-privileged corporation may pass on funds from its non-material sphere, such as donations and membership fees, to the economic units. However, the prerequisite is that these funds are used to compensate for losses attributable to the Corona crisis that have been incurred by 31 December 2022. However, the tax authorities do not accept the financing of permanent losses of the economic activity with funds from the non-material sphere.

May the training supervisor (e.g. coach of a football club) of a tax-privileged corporation (e.g. a non-profit association or a non-profit foundation), who is temporarily unable to perform his or her duties due to the Corona crisis, continue to be paid without jeopardising the non-profit status of the corporation?

Yes. The lump-sum allowances for exercise leaders may continue to be paid temporarily until 31 December 2022 if the exercise of the activity is not possible due to the Corona crisis.

Is the tax privilege of a corporation (for example a non-profit association) at risk if it refunds contributions already paid for the year 2020, 2021 or 2022 to its members who have suffered economic hardship as a result of the Corona crisis or if it waives the collection of contributions for the current year from these members? Does the statutes or contribution rules of the body have to be changed because of this?

In principle, a refund of contributions to members or a waiver of contributions by members is only legally permissible if this is included in the bylaws or contribution rules of the respective body.

If the current articles of association or contribution rules do not permit the repayment of contributions to members in economic distress due to the Corona crisis or the exemption of these members from contribution payments, such a repayment or such an exemption is exceptionally harmless for the status of non-profit status under tax law until 31 December 2022.

The corporation does not have to prove the economic hardship claimed by the member caused by the Corona crisis. It is sufficient if the member plausibly claims such hardship or if the member's hardship situation plausibly arises for the corporation from other circumstances.

However, it is not covered by this exemption and thus still detrimental to the status of non-profit status to repay a membership fee already paid or to waive an outstanding

membership fee because the services of the corporation cannot be provided due to the Corona crisis (for example, due to cancelled exercise classes or sports courses not being held).

Is it harmless for tax-privileged corporations (e.g. non-profit associations or foundations) if they top up the short-time allowance for their employees?

An increase in short-time allowance in 2020, 2021 and 2022 for the employees of tax-privileged corporations can also have an impact on the status of the corporation under public benefit law. However, a differentiation must be made here with regard to the amount of the top-up:

- In the case of an increase to up to 80% of the previous remuneration, it is assumed that the funds are used for purposes in accordance with the statutes and that the increase is "customary in the market and appropriate".
- The "previous remuneration" is the average net monthly salary paid in the three months before the introduction of short-time work.
- In the case of an increase to more than 80% of the previous remuneration, a corresponding justification is required, in particular regarding the "marketability and appropriateness" of the increase.

If collective agreements under labour law, such as collective agreements, provide for an increase of the short-time allowance, the submission of this agreement is sufficient to prove the "marketability and appropriateness". If companies that are not bound by collective bargaining law uniformly adopt the collective bargaining agreements of the industry for the supplementation of short-time allowance in individual contracts with all employees, a model contract serves as proof of the "customary market practice and appropriateness".

May tax-privileged corporations (for example, non-profit associations or foundations) support those affected by the Corona crisis, such as artists or solo self-employed workers?

Support payments by tax-privileged corporations to those affected by the Corona crisis, for example artists or solo self-employed persons, are harmless for the status of non-profit status until 31 December 2022 if tax-privileged purposes are pursued with the payments. Support measures outside of tax-privileged purposes are not compatible with non-profit status.

Examples:

- Promotion of art and culture: Reimbursement of expenses of local artists for the maintenance of a local cultural offer also for times after the Corona crisis.
- Pursuit of charitable purposes: Financial support for otherwise destitute natural persons. Since the promotion of charitable activities is limited to helping people in need, an extension to the support of entrepreneurial activities is excluded. The

corporation has to verify and document the neediness of the supported person itself. It is sufficient that the economic neediness of the supported person is made credible.

Many cultural or sporting events have to be cancelled due to the Corona crisis and ticket prices already paid have to be refunded. Is it possible for tax-privileged corporations (for example non-profit associations or foundations) to issue a donation receipt to the ticket holder if the latter waives the refund of the ticket price to which he is entitled?

If a ticket holder of a cultural or sporting event waives the payment of a refund to which he or she is entitled when the event is cancelled due to the effects of the Corona crisis, either in writing or by e-mail, then the organiser can issue him or her with a donation receipt for this amount if:

- the event was organised by an institution recognised as a tax-privileged organisation,
- the donation is used for tax-privileged purposes, and
- no consideration (for example in the form of a voucher, a ticket for an alternative date or any other consideration to the ticket holder) is connected with the donation.

If, on the other hand, a claim for reimbursement against a commercial ticket distributor or against independent artists is waived, no donation receipt can be issued for it, entitling the donor to a tax deduction for donations.

The ticket holder's written or e-mailed waiver must be documented with the duplicate of the issued donation receipt in the records of the issuer of the donation receipt.

Is it detrimental to the non-profit status if the association is unable to pursue its statutory purposes in 2020, 2021 and 2022 due to corona?

The decisive factor for the examination of non-profit status is that the actual management of the corporation is directed towards the exclusive and direct fulfilment of the tax-privileged purposes and complies with the provisions contained in the articles of association on the prerequisites for tax concessions (section 63 (1) of the German Fiscal Code). This is regularly checked on the basis of the accountability reports and/or minutes of the general meeting submitted with the tax return. During the Corona pandemic, many corporations are unable to carry out their statutory activities to the usual extent. Some corporations have even had to remain largely inactive since spring 2020. This is not objectionable from the perspective of non-profit law for the assessment periods 2020, 2021 and 2022 if these restrictions are made credible in the activity reports.

Is the cancellation or postponement of the general meeting to be reported to the competent tax office?

Due to the restrictions resulting from the COVID 19 pandemic, it has not been possible for many non-profit corporations in 2020 and 2021 to hold, for example, a general meeting as an attendance event. This is harmless under non-profit law. In order to solve the resulting problems under civil law, special regulations for expiring appointments of association or foundation boards and general meetings of associations taking place have been adopted in § 5 of the Act on Measures in Company, Cooperative, Association, Foundation and Condominium Law to Combat the Effects of the COVID 19 Pandemic (for example, possibility of virtual general meetings or written or electronic voting). These special regulations, which have been in force since 2020, apply to expiring appointments of board members as well as meetings and resolutions until 31 August 2022.

If a general meeting has been cancelled or postponed due to corona, the responsible tax office should be informed of this in the next regular tax return and any documents (e.g. activity reports) should be enclosed.

Can volunteers in vaccination or testing centres also claim the honorary service allowance or even the flat-rate allowance for exercise leaders?

All those who are directly involved in vaccination or testing on a part-time basis - i.e. in educational talks or in the vaccination or testing itself - and are thereby active in the service or on behalf of a legal entity under public law or a non-profit corporation can claim the lump-sum allowance for exercise leaders. This regulation applies to income in 2020, 2021 and 2022. The lump-sum allowance for exercise leaders was 2,400 euros in 2020; from 2021 it has been increased to 3,000 euros per year. Up to this amount, income for such activity in (mobile) vaccination or testing centres and (mobile) testing stations remains tax-free.

On the other hand, anyone who is engaged in the administration and organisation of (mobile) vaccination or testing centres as well as (mobile) testing stations on a part-time basis and is thereby active in the service or on behalf of a legal person under public law or a non-profit corporation can claim the honorary flat rate. For the year 2020, it amounted to up to 720 euros, from the year 2021 onwards, up to 840 euros per year are tax-free.

Are payments for those engaged in vaccination centres tax-free if the issue of the payment of the exercise leader and honorary lump sums is not made by the municipality, but by a local pharmacy, for example?

Regardless of the question of who runs the vaccination centre (e.g. municipality or pharmacist), the lump sums (exercise leader allowance or honorary lump sum) for income from activities in vaccination centres are granted tax-free. It is irrelevant whether the payment is made by the municipality or the vaccination centre. The other requirements of §§ 3 numbers 26, 26a of the Income Tax Act must also be fulfilled. The regulation applies to payments made in 2020, 2021 and 2022.

Will donations in kind from retailers to tax-privileged organisations be exempt from VAT for a limited period of time?

Donations in kind are subject to VAT as a so-called "free transfer of value" under the VAT Act, provided that the (subsequently donated) item or its components entitled the donating entrepreneur to a full or partial input tax deduction at the time of acquisition. The turnover taxation of donations in kind serves to compensate for the input tax deduction made, which benefited the person entitled to deduct input tax when acquiring the object. The aim is to prevent untaxed final consumption, which would be incompatible with the so-called VAT System Directive under EU law.

Flanking the BMF letter of 18 March 2021 (Federal Tax Gazette 2021 Part I page 384) on the VAT treatment of donations in kind, a temporary equity regulation for donations in kind was granted due to the absolute special situation. According to this, the taxation of a free gift of value is waived for goods that have been donated to tax-privileged organisations by retailers who have been directly and not insignificantly negatively affected economically by the Corona crisis. This regulation applies to donations made between 1 March 2020 and 31 December 2021.

Is the collection of Corona rapid tests exempt from VAT?

Corona rapid tests (so-called point-of-care (PoC) rapid antigen tests) performed by doctors or members of similar health care professions are VAT-exempt according to Section 4 number 14 of the Value Added Tax Act, irrespective of the personal instigation of the person tested.

In addition, for reasons of equity, the provision of Corona rapid tests is also exempt from turnover tax under section 4 number 14 of the Turnover Tax Act if they are carried out by service providers commissioned under section 6 paragraph 1 sentence 1 number 2 of the Coronavirus Test Ordinance, such as pharmacies, if these service providers guarantee that the tests are carried out properly, in particular following training under section 12 paragraph 4 of the Coronavirus Test Ordinance. This also includes corona rapid tests in privately operated test centres, insofar as the rapid tests

carried out in the test centre are carried out by the test centre's own or employed medical staff or trained employees.

The tax exemption can only be claimed uniformly for all Corona rapid tests carried out by the entrepreneur. If an entrepreneur invokes the VAT exemption, the input tax deduction is excluded for related input services.

- **Equity benefits (assistance benefits) from Corona assistance programs.**

Are support payments from the Corona aid programs, such as emergency aid, bridging aid or comparable support payments from the federal and state governments, subject to tax?
Emergency aid, bridging aid and comparable support payments are generally subject to income or corporate income tax and, if applicable, trade tax. This is usually additionally clarified in the respective funding guidelines. The funding guidelines may also regulate further details.

Are these support payments already taken into account when determining the advance income tax payment?
No, the support payments disbursed are not taken into account for tax purposes when determining the advance payments on the aforementioned taxes (income, corporation and trade tax), irrespective of any regulations in the respective funding guidelines. This also applies to any income resulting from the application of Section 6 (1) No. 3 of the German Income Tax Act to non-interest-bearing emergency aid loans. Failure to take aid into account in advance payments may result in back payments in the respective individual case for the corresponding assessment period.

Are support payments from the Corona aid programs, such as emergency aid, bridging aid or comparable support payments from the federal and state governments subject to sales tax ?
In principle, these are payments that are not subject to sales tax. The liquidity assistance granted does not take place in an exchange of services, because it is not granted for any specific service provided by the entrepreneur, and is therefore not subject to sales tax. The support payments are therefore neither to be stated in the advance VAT returns or annual VAT returns nor to be taken into account in the calculation of the small business limit according to § 19 of the VAT Act.

- **General income tax issues**

How can losses in the value of unsold seasonal goods caused by the "lockdown" be taken into account in the tax balance sheet?

Due to the "hard lockdown" and the associated restrictions at the end of 2020, the volume of unsold seasonal goods (e.g. fireworks or Christmas articles) could increase. These goods would be accounted for as "value" in current assets in the companies' balance sheets. If, due to the decline in sales, the value of these goods has permanently fallen below the acquisition or production costs on the balance sheet date, this can be taken into account by the companies via the instrument of partial value depreciation (i.e. a value adjustment) to reduce profits for tax purposes.

The existing regulations have proven themselves and are sufficiently flexible. They can also reflect the current situation of the companies in a targeted manner in the tax balance sheets. In this context, particular reference should be made to the possibility of already taking into account losses from partial write-offs during the year in the advance tax payments or with regard to a provisional loss carry-back within the framework of §§ 110, 111 of the Income Tax Act. This simplified mechanism for loss carryback was introduced by the Second Corona Tax Assistance Act. Further information on partial value depreciation can be found in the BMF letter dated 2 September 2016 (Federal Tax Gazette 2016 Part I page 995).

Does the suspension of the obligation to file for insolvency affect the admissibility of partial value write-downs on receivables as at the balance sheet date?

Insolvency applications filed within three months of the balance sheet date, at the latest before 1 May 2021, will be considered as value-eliminating factors when examining the admissibility of taking partial value write-downs on receivables as at balance sheet dates between 30 September 2020 and 31 March 2021.

Can the taxpayer deduct expenses for the Corona vaccination of its business partners and their relatives as business expenses? Is the Corona vaccination a benefit that constitutes business income for the business partner?

Expenses for Corona vaccinations of business partners and their dependents are fully deductible business expenses.

No business income is to be recorded for the business partner receiving the Corona vaccination. This also applies to vaccinations of the business partner's relatives.

Is the (subsequent) issuing of digital Corona vaccination certificates by doctors to be classified as a commercial activity which then leads to commercial infection in the case of group practices?

No. The issuing of vaccination certificates by doctors does not constitute a commercial activity within the meaning of Section 15 of the Income Tax Act. The issuing of digital vaccination certificates is merely a (different) form of documentation (instead of/

supplementary to the previous documentation in the "yellow" vaccination certificate) about Covid 19 vaccinations carried out. It is inextricably linked to the actual vaccination, which constitutes an original medical activity within the meaning of Section 18(1)(1) of the Income Tax Act. This also applies if the vaccination was carried out by another practice or body (for example, a vaccination centre).

In the case of joint practices, the issuing of vaccination certificates accordingly does not lead to a commercial dyeing within the meaning of Section 15, paragraph 3, number 1 of the Income Tax Act.

Can retired doctors or also retired nurses who care for patients for a health authority or a state or non-profit hospital as a result of the Corona crisis claim the so-called practice allowance?

The medical care of sick people is one of the favoured activities for which the so-called exercise manager allowance is applicable. Therefore, income from this activity in the amount of up to 2,400 euros per calendar year (3,000 euros from calendar year 2021) is tax-free if the following additional requirements are met:

- The regular weekly working time does not exceed 14 hours.
- The client is a legal entity under public law (e.g. a health authority or a state hospital) or an institution recognised for the promotion of tax-privileged purposes (non-profit, charitable or ecclesiastical) (e.g. a non-profit hospital).

If the doctor carries out several beneficiary activities, the exercise leader allowance is only granted once. The income from all beneficiary activities is tax-free up to 2,400 euros (3,000 euros from calendar year 2021). If expenses were incurred that are directly related to the beneficiary activity, they can only be taken into account for tax purposes to the extent that they exceed the tax-free income.

The care of sick people is also a beneficiary. Retired nurses therefore receive the exercise leader allowance under the same conditions as retired doctors.

Can doctors or nurses whose employment is suspended, for example because of parental leave or unpaid leave, and who care for patients for a health authority or a state or tax-privileged hospital as a result of the Corona crisis, claim the so-called exercise leader allowance?

Whether doctors or nurses are retired or whether the employment relationship is merely dormant is irrelevant for the granting of the exercise manager allowance. The explanations on retired doctors or retired nurses (see previous question) therefore apply accordingly.

Can I claim the expenses I incurred as a result of sharing the costs of the Corona return action of the Federal Foreign Office as extraordinary expenses for tax purposes?

Basically no. These expenses are not eligible for deduction for tax purposes because your trip abroad as such (as with a holiday trip) does not generally meet the requirements for an extraordinary burden.

How are expenses for the purchase of (breathing) protective masks to be treated for income tax purposes?

Expenses incurred by a taxpayer in connection with the purchase of protective masks are typically costs of private living according to section 12 number 1 of the Income Tax Act and thus not eligible for tax purposes.

The employee's expenses for protective masks purchased for professional use are income-related expenses. In this case, it is irrelevant for the deduction of income-related expenses if the protective masks are also worn on the way between home and the first place of work.

The costs of the protective masks provided by the employer for his employees to carry out their professional activities are fully deductible business expenses for the employer. If the employer provides the protective masks to his employees for professional use, it is to be assumed that the employer's interest is predominantly his own business (no taxable salary).

The expenses for the purchase of protective masks for the own business activity (including the journeys between home and business premises) for taxpayers with profit income are business expenses, provided that the protective masks are used for the performance of the business activity.

Furthermore, the expenses for the purchase of (breathing) protective masks cannot be deducted as special expenses or as extraordinary burdens.