

# MEASURES AND INSTRUMENTS TO HELP DEAL WITH THE CORONA CRISIS

Numerous government measures have already been taken to mitigate the economic consequences of the Corona crisis and to protect companies from existentially threatening conditions. This document aims to give you an overview (as of 20 April 2020), although in view of the speed at which further decisions at federal and state level are made, there is no guarantee that it is complete.

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## 1. FINANCING IN THE CORONA CRISIS

Production downtime, stay-at-home orders, event and contact bans. The coronavirus has crippled the economy - a severe recession is expected in the second quarter of 2020. After a shutdown lasting several weeks, countless companies throughout Germany are experiencing serious financial difficulties and are struggling to survive. The pandemic affects almost all sectors of the German economy and presents companies of all sizes with immense challenges. The Federal Government wants to alleviate the hardship of companies with comprehensive financial aid.

### Definition Criteria of SMES and large-scale enterprises

With regard to financial support a distinction has to be made between SMEs and large-scale enterprises. The classification into which size category a company falls is to be made in accordance with the definition criteria of the EU Commission.

Small enterprises are enterprises with less than 50 employees and an annual turnover or balance sheet total of maximum EUR 10 million, based on the last annual financial statement. By definition, medium-sized companies have less than 250 employees and an annual turnover not exceeding EUR 50 million or a balance sheet total not exceeding EUR 43 million.

If these criteria are exceeded, the company is to be classified as a large-scale enterprise. For example, an enterprise is only to be treated as an SME if it exceeds or falls below thresholds in two consecutive financial years.

If at least 25 % of the enterprise's capital is controlled by public authorities or bodies governed by public law, it is excluded from the definition of an SME.

### **The Corona financial support at a glance**

On 27 March 2020, the Bundesrat (Federal Council of Germany) passed a support package that was introduced into the legislative procedure under an urgent procedure, which includes emergency support for small companies and a reissue of the protection fund for large companies, the so-called economic stabilization fund. In addition, a KfW Emergency Program exists with a risk assumption by the Federal Government of up to 90 %, which will be extended on 6 April 2020 to include a program for KfW instant loans for SMEs with a risk assumption of up to 100 %. The aim is to give companies affected by the Corona crisis quick and easy access to loans from their principal banks. If companies lack the necessary collateral to take out a bridge loan, guarantee banks can assume up to 80 % of the risk. In addition, other support programs are in place in the individual federal states.

### **Better financing opportunities: KfW Corona aid**

In order to improve their liquidity and cover current operating costs, companies that were not in difficulty on 31 December 2019 can apply for a KfW loan through their principal bank. This option is available to small and medium-sized enterprises as well as large-scale enterprises.

The loans can only be drawn if temporary financial difficulties due to the corona crisis exist. Thus, KfW loans cannot be used for debt refunding or prolongation of existing financing.

### **KfW Entrepreneur loan for established companies**

Established companies that have been active on the market for more than five years can apply for the KfW Entrepreneur Loan. The KfW Entrepreneur Loan can be used for investments, working capital (e.g. liquid funds, personnel costs, rents), acquisitions and leasing costs, whereby in the case of leasing the total costs minus the residual costs are eligible. KfW assumes a large part of the liability risk in these loans: for small and medium-sized enterprises the credit risk assumption is up to 90 %, for large enterprises up to 80 %. This is intended to increase the willingness of the house banks to grant loans.

Company groups can borrow up to EUR 1 billion from the KfW, subject to certain loan limits. As a result of the Corona crisis, the criteria for eligibility to apply for loans have been extended so that companies now can apply for loans up to KfW credit rating class 6 (which roughly corresponds to Moody's B1) without additional collateral. Accelerated application procedures are in place depending on the loan volumes: For loans of less than EUR 3 million there is no risk assessment. For loans between EUR 3 and 10 million there is a fast-track procedure in which relatively few documents have to be submitted.

### **ERP start-up loan for young companies**

Young companies that have been on the market for less than five years need to be looked at more closely: If the company has been in business for at least three years or can present two annual financial statements, the Federal Government assumes up to 90 % of the risk in the case of SMEs and up to 80 % in the case of large-scale companies with the "ERP-

Start-Up Loan Universal", equal to the rules for the KfW Entrepreneur Loan. The other criteria, such as the restrictions on the maximum loan amount per company group, the extension of eligibility to KfW credit rating category 6 and the cutting back of documentation requirements in the application and review process, are identical to the requirements for the KfW Entrepreneur Loan as well.

Newly founded companies that have been on the market for less than three years can also take advantage of the "ERP-Start-Up Loan Universal" In this case, however, the KfW does not release the company from its liability, so the house bank bears the entire credit risk. Alternatively, start-ups and company successors can take advantage of the "ERP Start-Up Loan - Start-up Money", which allows a maximum loan volume of EUR 100,000 down to EUR 30,000 to be used as working capital. KfW facilitates access to the ERP Start-up Loan Start-up Money" by assuming 80 % of the risk.

### **KfW (instant loan) for medium-sized companies**

As of 6 April 2020, small and medium-sized enterprises with more than ten employees additionally have the possibility to apply for KfW instant loans for purchases and running costs. What makes this special is that the KfW covers these loans with a 100 % guarantee from the Federal Government. With the KfW instant loans the Federal Government has responded to demands by various business associations. In recent weeks, many companies have reported problems in obtaining loan commitments from their house banks for KfW Entrepreneur Loans or ERP Start-up Loans - Universal. Due to negative future prospects and the associated lack of creditworthiness of the applicants, some of the house banks had not been willing to assume the remaining 10 % risk and had refused to make loan commitments for the KfW Corona aid already in place. The full assumption of risk by the Federal Government is intended to remedy this problem.

With the newly launched KfW instant loans, companies with 11 to 50 employees can apply for a loan of up to EUR 500,000.

Companies with more than 50 and up to 249 employees can take out an instant loan of up to EUR 800,000. The loan amount is capped at up to three months' sales for 2019 and will only be granted to companies that have been in the market at least since January 2019 and have most recently generated profits (either in 2019 or on average over the past three years). The current interest rate for the instant loan is set to 3 % with a term of ten years. Since KfW assumes all risks, there is no need for a risk assessment by the principal bank.

### **KfW Special Program**

A KfW special program has been set up for medium-sized and large-scale enterprises, which enables KfW to participate directly in syndicated financing for investments and working capital. KfW assumes up to 80 % of the credit risk (maximum 50 % of total debt). KfW's share of the risk under the syndicated financing must amount to at least EUR 25 million - with 80 % risk assumption the minimum loan volume thus amounts to EUR 31.25 million. The KfW risk share may not exceed either 25 % of the annual turnover of 2019 or twice the wage costs of 2019 or the current financing requirements for the next twelve months.

### **Guarantees**

An alternative to the KfW loans is offered by guarantees, which can be assumed by the guarantee banks for financing projects up to EUR 2.5 million - the guarantee level was doubled due to the Corona crisis; previously it was set to EUR 1.25 million. The guarantee ratio amounts to 80 %. Enquiries can be made free of charge to the guarantee banks. A decision on amounts of up to EUR 250,000 is even made within three days.

For large financing projects with a guarantee amount of EUR 50 million or more, the “large guarantee program” (Großbürgschaftsprogramm) was opened up to enterprises outside structurally weak regions. Once all other financing possibilities have been exhausted, the Federal Government can invest in the syndicated financing within the framework of a State guarantee at a ratio of 50:50; the guarantee ratio amounts up to 80 %.

### **Economic Stabilization Fund**

With the Economic Stabilization Fund adopted on 27 March 2020, the Federal Government has set up a rescue package for large-scale companies. The aim is to keep companies that were competitive and had a viable business model before the corona pandemic liquid. The Economic Stabilization Fund enables the Federal Government to provide for guarantees of up to EUR 400 billion for debt instruments and liabilities which companies issue for refinancing on the capital market. In addition, the Federal Government intends to directly participate in the recapitalization of enterprises with up to EUR 100 billion, e.g. by acquiring equity capital, profit participation rights or bonds. Such direct participations in companies are only justified if the Federal Government has a vital interest in stabilizing these companies. In order to ensure that state funds are used for the intended purpose in the companies, state participation can be linked to specific conditions, e.g. with regard to the distribution policy or the remuneration of board members.

### **Corona emergency assistance program: grants for the solo self-employed and small enterprises**

The German government has launched a Corona emergency aid program for small and micro enterprises, the solo self-employed and freelancers. After it quickly became clear that shop and restaurant closures would pose an acute threat to the existence of small businesses in particular, direct grants were decided upon, which can be applied for at the federal states or at the bodies designated by the federal states.

For up to five employees, the federal support amounts to a one-off payment of up to EUR 9,000 for three months. For up to ten employees it amounts to a maximum of EUR 15,000. It should be noted that the grant is subject to taxation. This also affects the assessment of health insurance contributions.

Prerequisite for the grant is that the company had not been in economic difficulties before March 2020 and that the damage was caused by the corona crisis, i.e. after 11 March 2020. Applicants must demonstrate the extent to which their economic activity has been significantly affected by the corona pandemic and their economic existence is threatened as a result. Anyone who deliberately or grossly negligently makes false statements is guilty of subsidy fraud and must expect criminal prosecution.

The grants are intended to cover current operating costs and their amount is based on the actual liquidity shortage of the individual company: the decisive factor is the expected turnover as well as the operating material and financial expenses for three months from the date of application. The public funds are intended to pay for commercial rents, loans for business premises and leasing expenses.

Not covered by the emergency aid are costs of private living, such as rent for private accommodation and health insurance contributions. To enable small businesses and the self-employed to also continue to pay these costs, the Federal Government has simplified the access to unemployment benefit II (Arbeitslosengeld II) for a period of six months.

### **Support program of the federal states**

In addition to the federal program, numerous federal states have set up their own support programs which extend the circle of those entitled to apply to companies with (in some cases significantly) more than ten employees or are addressed

to particularly vulnerable sectors. The emergency aid program of the federal government can be combined with the corresponding emergency aid of the federal state in which the company is located. However, this must not result in any overcompensation of ongoing operating costs. If a later review, e.g. in the context of a tax declaration, reveals that the material and financial expenses or the actual loss of turnover was lower than stated and approved in the application, the additional grant received must be repaid. If subsidy fraud is suspected, criminal prosecution must be expected here as well.

### **Decisive criterion: who is actually eligible for funding?**

Only companies that have temporarily experienced financial difficulties due to the corona crisis can take advantage of the various government support programs. Background is that the state support measures must meet the requirements of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, which the EU Commission adopted on 19 March 2020. More specifically this means, that a company is only eligible for support if it was not already classified as a "company in difficulty" on 31 December 2019 within the meaning of European state aid law and the financial difficulties are a direct consequence of the corona pandemic. At the end of 2019, the company therefore still had to have a positive insolvency prognosis and mustn't have had any disordered payment arrears. This should be documented accordingly for verification purposes. Companies that were already in financial difficulties before the outbreak of the crisis are thus affected twice by the crisis: they have to struggle with a loss of sales and may be excluded from access to government support measures.

## **2. TAX DEFERRALS FOR COMPANIES IN TIMES OF CORONA**

As fiscal liquidity aid, the tax authorities grant tax deferrals to companies suffering from loss of profits and sales as a result of the corona pandemic.

On 19 March 2020, the Federal Ministry of Finance (BMF) published the following guidelines for the deferral of taxes to support companies in the corona crisis:

- ▶ Taxpayers who are directly and not inconsiderably affected by the economic consequences of the coronavirus may submit applications for deferral of taxes already due or becoming due by 31 December 2020. This applies to income tax, corporate income tax and value added tax. The tax offices are required to grant applications even if the damage caused by the coronavirus cannot be proven in detail in terms of value. No high demands are to be made on the tax deferral.
- ▶ As a rule, the tax offices waive deferral interest.
- ▶ Applications for deferral of taxes due after 31 December 2020 must be justified.

Several federal states have already provided application forms. Otherwise, according to the official press releases, applications should be made in writing and handled unbureaucratically. It should be noted that the application must also include a description of the individual economic effects of the coronavirus on the company concerned. Even if the tax authorities are instructed not to place high demands on this proof, it is nevertheless indispensable in order to document the direct and not insignificant impact of the corona crisis.

### **Note**

For withholding taxes, such as income tax and capital gains tax, a tax deferral is in principle not envisaged. According to reports, the finance ministries of the federal states, in coordination with the Federal Ministry of Finance, are working on

a guideline for the treatment of income tax, which is expected to be published shortly. However, it may already be possible to obtain a suspension of execution.

Also published on 19 March 2020 were identical decrees of the supreme tax authorities of the federal states on accompanying trade tax measures. Applications for deferral of trade tax must be submitted to the municipalities responsible for trade tax, and merely to the tax office in cases where the responsibility for trade tax does not lie with the municipalities (this applies in particular to city states).

### **3. CORONA CRISIS: REDUCTION OF ADVANCE TAX PAYMENTS**

There is hardly a company that does not suffer from liquidity bottlenecks in the face of the corona crisis - the reduction of tax prepayments is intended to ease their burden.

According to a letter from the Federal Ministry of Finance (BMF) dated 19 March 2020, companies can submit applications for adjustment of advance payments to income and corporation tax. Proof must be provided that they are directly and not insignificantly affected by the corona crisis. However, it is not necessary to prove the damage incurred in detail.

On the other hand, if requests for reductions of advance payments are made which only concern periods after 31 December 2020, special justification is required. Taxpayers affected by the effects of the coronavirus can also apply to their responsible tax office until 31 December 2020 for a reduction of the trade tax base value for the purposes of the advance payments to which the municipalities concerned are bound when determining the advance payments of trade tax.

### **4. CORONA CRISIS: PRACTICAL QUESTIONS ON THE INTRODUCTION OF SHORT-TIME WORK**

As a result of the corona crisis, the workload of employees in numerous companies has dropped significantly. In order to avoid a reduction in personnel, a simplified application of short-timework allowance has been established, with retroactive effect from 1 March 2020. This is associated with numerous open questions - for employers and employees alike. You will find answers to the most important questions in our FAQ.

#### **What types of short-time work do exist?**

Short-time work means the temporary reduction of working hours.

#### **Examples:**

- ▶ Zero working hours = reduction of weekly working hours to zero.
- ▶ Working hours reduced to 50 %: = reduction of weekly working hours by 50 %. The employee is only assigned 50 % of his or her regular working hours, since there is no higher demand.

#### **When, to what amount and from whom do employees receive short-time allowance?**

Short-time work allowance is paid by the employer to the employees at the end of the month.

- ▶ In the case of zero working hours, employees who have at least one child receive 67 % of their net remuneration (= nominal remuneration) and all other employees 60 % of their net remuneration. If collective bargaining agreements provide for supplements to short-time work allowances, these must be granted in addition. Employers may also make additional financial contributions on a voluntary basis; the general principle of equal treatment must be ensured.

- ▶ In the event of short-time work > zero, employees will receive salary and social security contributions only at the percentage rate at which they work. With short-time work reduced to 50 %, for example, the employer only has to pay half of the salary (plus corresponding non-wage labour costs) directly. In addition to the employer's contribution, the employee also receives a "short-time work allowance". The difference between the actual net remuneration after reduced working hours and the net remuneration for regular working hours forms the basis of the calculation and amounts to 60 % (and 67 % respectively for employees with children) of the in-come loss.

## **Are employees allowed to take on a second job during a period of short-time work?**

In principle, employees may pursue a second job during short-time work, but it should be noted that a second job that was taken up after the start of short-time work reduces the entitlement to short-time work allowance.

**Example:** The nominal remuneration is EUR 2,000, the actual remuneration due to reduced working hours is EUR 0. Thus, the entitlement to short-time allowance would amount to 60 % or 67 % of EUR 2,000. If the employee however accepts a part-time job during the short-time work phase, the earnings from it will reduce the difference between the nominal and actual remuneration, and therefore also the amount of the short-time work allowance.

**Important:** No crediting of the secondary employment against the short-time work allowance takes place if employees are employed as seasonal workers in agriculture during the short-time work phase or if the secondary employment was already taken up before the start of short-time work.

## **What happens to leave of absence that has already been approved and which now falls into the period of short-time work?**

Employees can still take already approved leave holidays. The employer cannot withdraw the leave of absence that has already been approved. For the duration of the leave of absence, the employee does not receive short-time work allowance despite short-time work but receives full holiday pay.

## **Is the holiday entitlement reduced in times of short-time work? (e.g. 4 weeks short-time work allowance - 2.5 days holiday entitlement)**

If short-time work is ordered to be reduced to zero, a corresponding reduction of the holiday entitlement is basically permissible. Collective agreements may contain different regulations.

## **What is the situation regarding fixed-term contracts or employees in their work trial period?**

Employees with fixed-term employment contracts and employees on trial periods are also entitled to short-time work benefits.

## **How is the situation regarding the marginally employed to be assessed?**

The marginally employed are not entitled to short-time work compensation. There are two options here (in addition to paid leave):

- ▶ Conclusion by mutual agreement of a supplementary agreement suspending the employment relationship (un-paid leave).
- ▶ Arrangement of the build-up of minus hours.

**Why do employees first have to take their remaining leave from 2019?**

Prerequisite for claiming short-time work allowance is that employees first take their remaining vacation from 2019.

**Is it legally possible to order the shutdown of companies?**

In companies with a works council, a works council agreement can be used to introduce a company shutdown. However, special notice periods must be observed. In addition, at least 2/5 of the annual leave must remain at the employees' free disposal. In companies without a works council, corresponding agreements must be concluded individually with the employees.

**Can the duration of short-time work also be reduced if - contrary to expectations - the situation changes for the better?**

Yes, the duration of short-time work can also be reduced again ahead of schedule, provided that the notice periods agreed in the works agreement or the individual supplementary agreements are observed. Any notification of a longer period of short-time work that has already been given to the employment agency can also be modified at any time when the application for short-time work allowance is submitted.

**How is the short-time allowance been calculated?**

From time to time the net salary fluctuates due to various reasons.

The basis for calculating the short-time work allowance is the "lump sum net remuneration". The calculation of this lump-sum net remuneration is a purely arithmetical procedure, in which three values are deducted from the gross remuneration specified in the employment contract:

- ▶ Social security flat rate of 20 %,
- ▶ Income tax
- ▶ Solidarity surcharge

**Why are several months of short-time work being introduced, even though the situation may have improved significantly by the end of April?**

Companies can apply for up to twelve months of short-time work - depending on how long the reduction in work is expected to last. Since there is currently no reliable indication of when the situation will improve again, companies can save themselves the trouble of recurring notifications and immediately report short-time work for a longer period. It is possible to terminate or flexibly adjust short-time work at any time.

**Can individual employees also be brought back flexibly if this becomes necessary? How are they then remunerated?**

If necessary, it is possible to bring individual employees back from short-time work on a flexible level, provided that reasonable deadlines are observed. They receive their normal remuneration for the hours worked and short-time work allowance for the cancelled hours.



**How does short-time work affect the use of company cars?**

The possibility of using a company car despite a short-time working phase should lead to a pecuniary advantage subject to income tax, which is taxable as before. If fewer trips to the workplace are actually made (<15), it may be possible to switch from the 0.3 % rule to 0.002 % per actual trip.

**Are trainees entitled to short-time work allowance?**

As a rule, it is not possible to order short-time work for trainees, as the company providing training is obliged to exhaust all means to ensure that training continues. For example, the company has the following options:

- ▶ Change of the curriculum by bringing forward other learning contents
- ▶ Transfer to another department
- ▶ Transfer back to the training workshop
- ▶ Organization of special training events.

Only when all possibilities have been exhausted can short-time work also be considered for trainees. If trainees are ordered to work reduced hours, they are entitled to payment of the full training allowance for at least six weeks. In deviation from the statutory minimum duration, training and collective agreements may provide for longer periods. Subsequently, they are entitled to short-time allowance.

**What about employees who were already on sick leave for an indefinite period before short-time work began? Do these employees receive short-time work allowance or continued pay?**

If the employee had already been incapacitated for work before the period of short-time work began, the employer must first continue to pay continued remuneration to the employee as long as short-time work had not yet been implemented. However, as soon as and as long as an employee is unable to work due to short-time work, the continued remuneration to be paid is reduced by the lost working time. In addition to the reduced continued remuneration, partial sick pay is granted in the amount of the reduced short-time work allowance. This is paid by the employer. If the continued remuneration period ends, the supplementary sick pay also ends. This is replaced by general sickpay. With the beginning of this benefit, the risk of replacing the lost remuneration is transferred in full to the health insurance. Sick pay takes priority over the entitlement to short-time work allowance.

**Does the receipt of short-time work allowance influence the amount of parental benefits?**

Yes. Parental benefit amounts to 67 % of the average monthly net income from employment in the 12 months preceding the birth. Compensation benefits are not considered as income. Short-time work allowance is therefore not included in the calculation of parental benefits because they replace wages.

**Can the short-time working allowance be increased by a supplement in the collective agreement?**

Various collective bargaining agreements already provide for (mainly moderate) top-up amounts to the short-time working allowance. In contrast, the collective bargaining agreement for the retail sector in North Rhine-Westphalia (NRW) has so far been reserved. Apart from a four-week notice period, which had to be observed, the employers were largely free to design short-time work. That time is over now. With retroactive effect from 1 March 2020 and limited in time until 30 June 2020, ver.di and the Handelsverband Nordrhein-Westfalen e.V. (Trade Association of North Rhine-Westphalia) adopted a supplement to MTV Einzelhandel NRW. Without giving the parties to the agreement any leeway via an opening clause to take account of the economic performance of the company concerned, an increase in the short-time working

allowance to 100 % of the regular net remuneration of the employees affected by short-time working for the first four weeks after announcement and to 90 % at the end of the four weeks was adopted. In return, the period of notice shall not apply. To compensate for the tax liability on the top-up amount (top-up payments are taxable), the top-up amount is also increased by a further 15 %.

**Note:** According to the Handelsverband Nordrhein-Westfalen e. V., there are no plans for comparable collective agreements in other collective bargaining areas.

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