

CORONA PANDEMIC

Status: 6 April 2020

Government measures to mitigate the impact of the coronavirus and related information

| | | |
|-----|--|--|
| 1. | Reduced hours & compensation (“Kurzarbeit”) / reduced hours compensation benefit (“Kurzarbeitergeld” = KUG) | |
| 1.1 | Requirements | <p>If companies decide on reduced hours and compensation (normal case: partial; special case: 100%) due to the corona epidemic, the resulting loss of remuneration for the employee is partially compensated by government via reduced hours compensation benefit (in the following: “Kurzarbeitergeld” or “KUG”).</p> <p>Requirements:</p> <ul style="list-style-type: none">• Agreement with employees/works council/trade union• benefit must be applied for with the Federal Employment Office by the employer• At least 10% of the employees must be affected by reduced hours & compensation (previously: 30%)• No need to build up negative working time balances before reduced hours compensation benefit / KUG can be applied (unlike before)• Temporary workers can also receive reduced hours compensation benefit / KUG (unlike before)• Social insurance contributions on reduced hours compensation benefit (KUG (normally paid by the employer) are reimbursed in full by the Federal Employment Agency |

| | | |
|------------|---|---|
| <p>1.2</p> | <p>What is the sequence of steps to be followed for KUG?</p> | <p>Application with the Federal Employment Agency (“Bundesagentur für Arbeit”) in 2 steps:</p> <ol style="list-style-type: none"> 1) One-time notification of the need for reduced hours compensation benefit / KUG to the employment agency using a standard form (can be submitted immediately) 2) Application for reduced hours compensation benefit → Benefits must first be calculated using payroll software. <p>Steps for the company as a whole:</p> <ol style="list-style-type: none"> 1) Agreement with employees/works council/trade union on reduced working hours & remuneration 2) One-time notification of need for reduced hours compensation benefit to the employment agency 3) Application for reduced hours compensation benefit at the employment agency 4) Employer pays the agreed, lower remuneration and the reduced hours compensation benefit directly to employees 5) Employment agency reimburses employer for reduced hours compensation benefit in one sum |
|------------|---|---|

| | | |
|-------------------|--|---|
| <p>1.3</p> | <p>Who is entitled to reduced hours compensation benefit / KUG?</p> | <p>Entitled are:</p> <ul style="list-style-type: none"> • Employees who are subject to compulsory unemployment insurance, including part-time and temporary workers <p>Not entitled are:</p> <ul style="list-style-type: none"> • Marginally employed persons (Geringfügig Beschäftigte) • Pensioners • Recipients of sickness benefit (Bezieher von Krankengeld) • Trainees (Auszubildende) <p>Special measures for employees in quarantine: entitlement to compensation in accordance with the Infection Protection Act (IfSG)</p> |
| <p>1.4</p> | <p>How high is the KUG?</p> | <p>The calculation is based on the net loss of remuneration and is generally</p> <ul style="list-style-type: none"> • 60% for employees without children • 67% when there is at least 1 child in the household <p>The reduced hours compensation benefit / KUG is limited in its determination to the contribution assessment ceiling (Beitragsbemessungsgrenze) for unemployment insurance.</p> |
| <p>1.5</p> | <p>Who is my contact at SMC for questions regarding reduced hours compensation benefit / KUG?</p> | <p>You are welcome to contact the employees, managers or partners you know with your questions. Further support with applications and with questions concerning labor law will then be provided through our in-house lawyer Mr. Henning Riehl.</p> |

| | | |
|-------------------|---|---|
| <p>2.</p> | <p>Support measures for companies</p> | |
| <p>2.1</p> | <p>How can a company obtain liquidity?</p> | <ul style="list-style-type: none"> • KfW Bank The federally owned KfW Bank has various existing loan programs. Access to these has been made easier. These programs can be accessed through your house banks, which are the first point of contact in this respect • Guarantee banks Guarantee banks may now make their own decisions within 3 days for decisions up to EUR 250,000. Cost free advance inquiries for financing possible with promised feedback within 48 hours. <p>However, the simplifications announced by the Federal Government do not mean that the house banks will not continue to assess the credit risk and request appropriate documentation (annual financial statements, adjusted budgets and corporate plans, cash flow calculations reflecting the effects of reduced business volume due to the COVID-19 crisis).</p> <p>If you have any further questions or would like support in obtaining liquidity assistance, we will, in addition to your house banks, of course be at your side at any time. You are welcome to contact Roland Schiff-Martini directly (Roland.Schiff-Martini@schiffmartini.com).</p> |
| <p>2.2</p> | <p>What simplifications for KfW-loans and for receiving guarantees have been introduced?</p> | <p><u>KfW-Bank</u> KfW-Unternehmerkredite (for long-existing companies) and ERP-Gründerkredit – Universell (for companies younger than 5 years): conditions relaxed:</p> <ul style="list-style-type: none"> • Risk assumption increased: up to 80 % for working capital loans up to € 200 million • Instruments are also available to larger companies with a turnover of up to € 2 billion (previously: € 500 million) |

| | | |
|--|--|--|
| | | <p>KfW Kredit für Wachstum</p> <ul style="list-style-type: none"> • also for larger companies: Turnover size increased from € 2 billion to € 5 billion • for syndicate financed projects no limitation to a specific area (so far: only innovation and digitization) • Risk assumption is increased to up to 70 % (previously 50 %). <p>KfW launches additional special programs for enterprises that temporarily encounter more serious financing difficulties due to the crisis</p> <ul style="list-style-type: none"> • Rapid loans for investment and working capital for medium-sized enterprises: Loan coverage by 100% guarantee of the Federal Government and thus with facilitated proof of credit - although certain requirements have to be met - and an interest rate of currently 3% p.a. • for larger companies direct participations within the framework of syndicated financing are possible <p>For companies with a turnover of more than €5 billion: support as before subject to individual assessment</p> <p><u>Bürgschaftsbanken</u></p> <ul style="list-style-type: none"> • The guarantee banks double the maximum guarantee amount to € 2.5 million; guarantee banks can make guarantee decisions up to € 250,000 independently and within three days • Großbürgschaftsprogramm, originally set up for enterprises in economically underdeveloped regions of Germany, opened to enterprises outside these regions • the Federal Government provides export credit guarantees (Hermes guarantees) to protect companies against payment risks in foreign trade |
|--|--|--|

| | | |
|------------|---|--|
| <p>2.3</p> | <p>Help for solo self-employed persons</p> | <ul style="list-style-type: none"> • During ordered quarantine according to IfSG compensation for loss of earnings (plus expenses for private social security) and ongoing, uncovered operating expenses possible • If not under quarantine, but turnovers break away or the business closed regardless: Emergency fund for small and medium sized companies announced to help with leases and rentals; however, concrete details are not yet known • Applying for unemployment benefits (ALG I; applicable if a voluntary unemployment insurance exists) or social security benefits under ALG II ("Hartz IV") should be considered. Requirements have been eased (temporary suspension to taking assets into account etc.) • In the case of SHI-insured persons, a reduction in contributions and, under certain circumstances, other measures such as deferral, etc. are possible <p>The Federal Government has made taxable grants available as one-off emergency aid for micro-enterprises from all sectors as well as for self-employed persons and members of the liberal professions. This is intended to help in particular with rental and leasing costs and other operating costs, e.g. loans for business premises or leasing instalments.</p> <ul style="list-style-type: none"> • Up to € 9,000 single payment for 3 months for up to 5 employees (full-time equivalents), • Up to € 15,000 single payment for 3 months for up to 10 employees (full-time equivalents). <p>If the landlord reduces the rent by at least 20%, the unused subsidy can also be used for two further months.</p> <p>In addition, all federal states have set up emergency aid programs, with some of them increasing the emergency aid provided by the federal government.</p> |
|------------|---|--|

| | | |
|-------------------|---|--|
| <p>2.3</p> | <p>Assistance for tenants / special termination protection for tenants</p> | <p>A law to mitigate the consequences of the COVID 19 pandemic in civil, insolvency and criminal proceedings entered into force on 1 April 2020.</p> <p>According to this law, the right of landlords to terminate rental agreements will be restricted. This applies to both residential and commercial rentals. Landlords are not allowed to terminate a rental agreement due to rental debts from the period between April 1, 2020 and June 30, 2020 if the rental debts are based on the effects of the COVID 19 pandemic. The connection between the COVID-19-Pandemic and the refusal of payment must be demonstrated.</p> <p>However, the obligation of tenants to pay the rent on time remains in force; non-payment may also give rise to interest on arrears (for company's ca. 8% p.a.). The outstanding rent is to be paid by the companies by 30 June 2022 at the latest, as from that date the protection against termination ceases to apply. The operating and ancillary costs are apportionable to the tenant also for the period from April to June 2020 and therefore have to be paid.</p> <p>This applies accordingly to tenure. The regulations are initially to apply until 30 June 2020 and may be extended under certain conditions.</p> |
|-------------------|---|--|

| | | |
|-------------------|---|--|
| <p>3.</p> | <p>Compensation, insolvency</p> | |
| <p>3.1</p> | <p>Compensation for loss of orders due to the corona epidemic ("force majeure")?</p> | <p>Whether or not a contractual force-majeure-clause will come into effect in the wake of the Corona crisis depends on certain conditions. Otherwise, each individual case must be considered carefully on its own. The DIHK (German Industry and Trade Federation) recommends that, in the event of current problems or cancellations, you should talk to business partners about a fair settlement for both sides and, if in doubt, seek legal advice from lawyers.</p> <p>Even in the case of delivery failures in international trade, the legal consequences of alleged or actual force majeure can differ greatly - depending on whether the contracts were concluded under German or Anglo-Saxon law.</p> |
| <p>3.2</p> | <p>Regulations in the event of insolvency?</p> | <p>As a result of the "COVID 19 Insolvency Suspension Act (COVInsAG), the obligation to file for insolvency is suspended retroactively from 1 March 2020 until 30 September 2020. By government decree, this may be extended to 31 March 2021.</p> <p>This does not apply if the insolvency is not due to the effects of the COVID 19 pandemic or if there is no prospect of eliminating an existing inability to pay. If the debtor was not insolvent on December 31, 2019, it is assumed that the insolvency maturity is due to the effects of the COVID 19 pandemic and that there are prospects of eliminating an existing insolvency.</p> <p>Following the suspension of the obligation to file for insolvency, there is a liability relief for managing directors for payments made after insolvency maturity has been reached.</p> |



| | | |
|--|--|---|
| | | For a three-month transition period, the right of creditors to apply for the opening of insolvency proceedings is also suspended. |
|--|--|---|

| | | |
|-------------------|---|---|
| <p>4.</p> | <p>Compensation in accordance with the Infection Protection Act (IfSG)</p> | |
| <p>4.1</p> | <p>Who is entitled to compensation under the IfSG?</p> | <p>Entitlement</p> <ul style="list-style-type: none"> • in the event of a ban on activities or quarantine ordered by the health authorities <p>No Entitlement</p> <ul style="list-style-type: none"> • Parents who are not banned from working and whose children have no childcare facility due to due closed childcare facilities • In case of other, remunerated assignment within the company • For times of sick leave (*) • For trainees <p>* Normal wage continues to be paid by employer in case of illness for max. 6 weeks, with a partial reimbursement by health insurance companies to smaller companies (with up to 30 full time equivalent employees = "FTE").</p> <p>Entitlement includes</p> <ul style="list-style-type: none"> • Compensation for loss of earnings • Reimbursement of ongoing operating costs "to an appropriate extent". |

| | | |
|------------|---|---|
| <p>5.</p> | <p>Support measures within tax law</p> | |
| <p>5.1</p> | <p>How does the government help?</p> | <p>Already on 19 March 2020, the Federal Ministry of Finance (BMF letter) and the supreme tax authorities of the federal states issued identical decrees:</p> <ul style="list-style-type: none"> • Interest-free deferrals of the following types of tax if sales have collapsed due to the corona crisis <i>To be applied for with the tax authorities:</i> <ul style="list-style-type: none"> ○ Income tax (IT) ○ Corporate income tax (CIT) ○ Value added tax (VAT), including the deferral of the monthly VAT prepayments • <i>To be applied for with the cities / municipalities (exception: city states):</i> <ul style="list-style-type: none"> ○ Trade tax (TT) → interest-free subject to municipality’s decision • A reduction of advance payments for IT, CIT and TT for the purpose of advance payments can be applied for with the tax authorities (the municipality determining the TT is bound to the tax authorities’ assessment of the TT base amount). No extensive evidence should be necessary. • Enforcement measures and late payment penalties are suspended by the tax authorities until 31 December 2020 (insofar as they relate to the above listed taxes). The decision remains with the municipalities if taxes (trade tax) are to be paid to municipalities. <p>Further solutions for the submission of VAT declarations are under discussion (possibly extension of submission deadlines or conversion to quarterly advance returns).</p> |

| | | |
|-------------------|--------------------------|---|
| | | <p>As things stand at present, no simplifications are (yet) envisaged for deadlines for submission and participation in the tax determination process. Currently the general regulations concerning late payment penalties continue to apply. If the deadline is imminent, an application for an extension of the deadline should be submitted and, if necessary, the responsible tax office should be consulted.</p> <p>A deferral of wage tax is not possible.</p> <p>In some cases, more far-reaching measures have been taken by the Federal States themselves. Most of the federal states now grant a reduction or full refund of the special advance payments already made for VAT (1/11) based on informal application.</p> <p>For other types of tax, the competent authorities are also encouraged to provide adequate assistance to taxpayers (deferrals, suspension of enforcement and adjustment of advance payments).</p> <ul style="list-style-type: none"> • Customs administration (e.g. energy tax and air traffic tax) • Federal Central Tax Office (insurance tax) |
| <p>5.2</p> | <p>Tax audits</p> | <p>Tax audits are interrupted if necessary. In any case, you can expect understanding for longer processing times of inquiries etc. Applications for extensions of deadlines should be granted more easily.</p> |

| | | |
|------------|---|---|
| <p>6.</p> | <p>Measures in social security law</p> | |
| <p>6.1</p> | <p>Facilitations for companies?</p> | <p>The possibility of deferring social security contributions is in principle already regulated. A deferral is possible if immediate collection is associated with considerable hardship for companies and the claim is not jeopardized by deferral. The application for deferral could currently fail due to the second requirement, because of the fundamental threat to the existence of many companies right now.</p> <p>The decision on deferral lies with the respective health insurance company as the responsible collection agency.</p> <p>The Association of Statutory Health Insurance Companies (GKV-Spitzenverband) has announced in an open letter that initially, for the months of March and April 2020, payment of social security contributions can be deferred on request in a simplified manner (compared to the normal regulation). These are then to be paid with the current contributions on the due date in May 2020. No late payment surcharges or reminder fees will be levied.</p> <p>In a second circular dated 25 March 2020, it was clarified that (IMPORTANT!) contribution deferrals are only possible once all other avenues of aid have been used up! Priority is given to KUG, subsidies and loans!</p> <p>As far as employers are considerably affected by the crisis, enforcement measures can be provisionally waived for the above-mentioned period for all contributions in arrears or due by this date.</p> |

| | | |
|-----|---|---|
| | | It is currently being examined whether there will be further legal regulations for the deferral of total social security contributions (analogous to earlier measures in the case of flood disasters). These have not yet been adopted. |
| 6.2 | What are the effects of the Corona crisis on social security audits? | Since 16 March 2020, the Auditing Service of the German Pension Insurance (Deutsche Rentenversicherung Bund) no longer carries out on-site audits of at employers' and tax advisors' premises. Insofar as audits are carried out, this is done in the context of sending or transmitting documents and data, especially in the context of electronically supported tax audits. |
| 6.3 | What are the consequences for contributions to the statutory accident insurance institutions, the employers' liability insurance associations? | <p>The nine Berufsgenossenschaften have provided information on their websites about the payment reliefs they offer in the event of difficulties in paying contributions. Applications for deferment of payment etc. can also be submitted.</p> <p>The professional associations point out that the final contribution assessment notices for 2019 must have been issued in order to apply for the above mentioned relief. These will probably be sent out at the beginning of April.</p> |

| | | |
|-----|--|---|
| 7. | Annual financial statements as of 31 December 2019 | |
| 7.1 | Effects of the Corona crisis on the preparation of the financial statements 2019? | <ul style="list-style-type: none"> • although the first corona infections occurred in December 2019, they were still limited to Asia • Expansion of the crisis into a global event did not take place until January 2020, which means that the value-creating event is located in 2020 and thus its effects (formation of provisions, special depreciation, etc.) will likely not yet be taken into account in the annual financial statements as of 31 December 2019 • If applicable, consideration of the effects of the corona crisis in the notes to the financial statements under "Subsequent events after the balance sheet date", provided they are of "special significance" for the company; disclosure not mandatory for small corporations • If applicable, consideration in the management report in the sections on risk report and forecast report; management report not mandatory for small corporations |

Status: 6 April 2020