Articles

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Fiscal measures to counteract the economic consequences of the COVID-19 pandemic in Germany

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Abstract

This article outlines and analyzes the different fiscal measures which have been realized in Germany in order to counteract the economic damages caused by the coronavirus pandemic and its subsequent lockdowns. Tools of direct as well as of indirect taxation will be explained in detail, but also procedural tax law and international tax aspects will be taken into consideration. Since domestic and international taxation are part of the global economy, the measures taken by the German Government will be regarded even from an economic perspective. In this case, this article also shows other non-fiscal tools that have to be mentioned in order to understand the rationale behind the federal supports. Furthermore, a critical point of view on the different approaches will be laid down for being able to evaluate the decisions of the Government. It will also be explained why the current and apparently relatively low unemployment rate could raise soon.

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Keywords

Coronavirus – COVID-19 – Financial stimulus – Federal support – Corporate taxation – Income taxation – VAT – direct taxation – Indirect taxation – Double tax convention – OECD – Germany – Finance – Lockdown

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1. General overview

Despite being the biggest economy of the euro zone, Germany has also been dramatically affected by the economic impacts of the coronavirus pandemic. The origin of the virus spreading across the Federal Republic of Germany can be traced back to patient zero, an employee of the company *Webasto* in Stockdorf, Bavaria, near Munich[1]. From 16 March 2020, the German Government announced border controls to his neighbor countries Austria, France, Switzerland, Denmark and Luxembourg in order to contain the spread of the virus[2], but also communicated strict contact restrictions for private persons (first lockdown in Germany)[3], as the closing of sites of cultural interests, fairs, bars, night clubs, but also private sports clubs and playgrounds (schools and universities had been closed at that time yet, because of rulings of the respective Federal State). On 28 October 2020, German Chancellor Angela Merkel announced a second lockdown for Germany ('lockdown light')[4] with effect from 2 November 2020 (schools, universities and other educational institutions could remain open[5]), since the coronavirus infection rate has significantly raised in autumn[6].

Due to the impact of the coronavirus lockdown on the German economy, German Economy Minister Peter Altmaier expects GDP (Gross Domestic Product) to contract 5.5 % compared to 2019[7], although a double dip recession[8] could be possible if the new restrictions are likely to affect the economic recovery negatively again. The unemployment rate as of October 2020 is at 4.5 %[9] and still below the EU average of 7.6 %[10]. The relatively low

[1] On 27 January 2020, a 33-year-old man caught the coronavirus infection from a Chinese colleague visiting the Bavarian automotive company *Webasto* near Munich.

[2] Bundesministerium des Innern, für Bau und Heimat, *Vorübergehende Grenzkontrollen an den Binnengrenzen zu Österreich, der Schweiz, Frankreich, Luxemburg und Dänemark* (*BMI*, 15 March 2020) <www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/03/grenzschliessung-corona.html> accessed 31 October 2020.

[3] Presse- und Informationsamt der Bundesregierung, *Vereinbarung zwischen der Bundesregierung und den Regierungschefinnen und Regierungschefs der Bundesländer angesichts der Corona-Epidemie in Deutschland* (*BPA*, 16 March 2020) <www.bundesregierung.de/breg-de/aktuelles/vereinbarung-zwischen-der-bundesregierung-und-den-regierungschefinnen-und-regierungschefs-der-bundeslaender-angesichts-der-corona-epidemie-in-deutschland-1730934> accessed 31 October 2020.

[4] Order of the German Government and the German Federal States of 28 October 2020, *Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 28. Oktober 2020* (*BReg*, 28 October 2020) <www.bundesregierung.de/resource/blob/997532/1805024/5353edede6c0125ebe5b5166504dfd79/2020-10-28-mpk-beschluss-corona-data.pdf?download=1> accessed 31 October 2020.

[5] In Germany, educational issues are the responsibility of the Federal States.

[6] Accumulated figures as of 31 October 2020 show a total annual number of 518,753 infections of which 10,452 have died and 351,200 have recovered so far. This leads to an average mortality rate of 2 % and to an average recovery rate of 68 %. Robert-Koch-Institut, *COVID-19-Dashboard* (*RKI*, 31 October 2020) <https://experience.arcgis.com/experience/478220a4c454480e823b17327b2bf1d4/page/page_1/> accessed 31 October 2020.

[7] Expected GDP for 2020. Statista, *Veränderung des Bruttoinlandsprodukts (BIP) in Deutschland von 2005 bis 2019 und Prognose der Bundesregierung bis 2025* (*Statista*, 30 October 2020) <https://de.statista.com/statistik/daten/studie/164923/umfrage/prognose-zur-entwicklung-des-bip-in-deutschland/> accessed 31 October 2020.

[8] In a double dip recession, an economy's phase of growth slows down and slides into a second recession after having recovered from the previous recession.

[9] German unemployment figures of October 2020. Bundesagentur für Arbeit, *Arbeitslosenquote & Arbeitslosenzahlen 2020* (*BAA*, 29 October 2020) <www.arbeitsagentur.de/news/arbeitsmarkt-2020> accessed 31 October 2020.

[10] Unemployment figures as of August 2020 for the European Union. Statista, *Europäische Union: Arbeitslosenquoten in den Mitgliedstaaten im September 2020* (*Statista*, 3 December 2020) <https://de.statista.com/statistik/daten/stud-

unemployment rate in Germany results from the non-permanent work loss compensation *Kurzarbeitergeld*[11] ('Kug') which can be applied for under certain commercial conditions as obviously caused by the coronavirus[12]. Normally, this unemployment benefit can be received up to twelve months, but under certain labor market conditions up to 24 months. In this case, and if the labor market conditions do not get better in the near future, it can be assumed that after the expiration of this special form of work loss compensation the unemployment rate could end up higher, since the Kug tends to cover some permanent job losses in a middle or long-term view.

Furthermore, in order to circumvent a possible flood of bankruptcies, the *Bundestag* passed the new *COVID-19-Insolvenzaussetzungsgesetz* ('COVInsAG') on 27 March 2020 with retrospective effect from 1 March 2020[13]. On the basis of this new law, the general three-weeks-period of filing for bankruptcy according to German Bankruptcy Law (*Insolvenzordnung*; 'InsO')[14] was extended till 30 September 2020 when a company is overindebted or unable to pay due to the economic impact of the coronavirus. On 25 September 2020, the initial suspension of filing for bankruptcy was once again extended till 31 December 2020[15] under the single condition of overindebtedness[16].

It is clear that Germany – besides all the other countries affected by the coronavirus pandemic – will have to counteract the economic damage with stimulus packages or has even done so recently. It is expected for 2020 that the German public debt will reach almost 80 % of the GDP (after the World Financial Crisis, the public debt was the highest for years

ie/160142/umfrage/arbeitslosenquote-in-den-eu-laendern/> accessed 3 December 2020.

[11] § 95 SGB III. The *Kurzarbeitergeld* serves as a temporary social security for workers and employees of companies which would normally lay off its staff because of decreasing sales or less incoming orders in economically challenging times. In order to prevent these lay-offs, but also to reduce the personnel expenses of the affected company, the *Bundesagentur für Arbeit* bears at least 60 % of the net salary of the employee (67 % for employees with at least one child). According to its directive 202030015 of 30 March 2020, a basic condition is the loss of wages of more than 10 % for at least 10 % of all employees. Furthermore, 100 % of the social costs will be covered by the State till 31 December 2020. In its directive 20200500 of 28 May 2020, further expansion was communicated. When there is a salary loss of about more than 50 %, the Kug will be paid up to 70 % (77 % for employees with at least one child) with the beginning of the fourth month and up to 80 % with the beginning of the seventh month (87 % respectively for employees with at least one child). These benefits were originally valid until 31 December 2020 but have been extended for one more year until 31 December 2021, directive 202011007 of 6 November 2020. Furthermore, the State will bear the social costs of the affected companies up to 100 % until 30 June 2021 and from 1 July 2021 until 31 December 2021 up to 50 %.

[12] In the United States, there are no similar unemployment benefits. In the meantime, that is why the unemployment rate of the United States was at 14.7 % in April 2020. U.S. Bureau of Labor Statistics, *Unemployment rate rises to record high 14.7 percent in April 2020* (*BLS*, 13 May 2020) <www.bls.gov/opub/ted/2020/unemployment-rate-rises-to-record-high-14-point-7-percent-in-april-2020.htm> accessed 31 October 2020.

[13] Bundestag, *Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht*, 27.03.2020, BGBl. 2020 I 569.

[14] § 15a InsO. The general period of filing for bankruptcy is three weeks after the recognition of overindebtedness or inability to pay.

[15] Bundestag, *Gesetz zur Änderung des COVID-19-Insolvenzaussetzungsgesetzes*, 25.09.2020, BGBl. 2020 I 2016.

[16] § 1 para 2 COVInsAG. When a company is unable to pay, this law will not be applicable, and the company has to file for bankruptcy.

with a rate of more than 80 %)[17]. In total numbers, this means that the Government plans to contract new debts of about € 218 bn for 2020 calculating without a second coronavirus infection wave[18]. Taken as a whole, Germany's fiscal and financial efforts to fight the economic consequences caused by the coronavirus pandemic represent the biggest stimulus package in Germany's history[19].

2. Direct tax measures

2.1. General aspects

This section seeks to describe certain fiscal aids, either for private persons as a matter of personal income taxation, or for companies subject to corporate income taxation. There have not been fundamental changes in the national tax regime, so that the most important fiscal measures will be pointed out. Regarding both personal income tax law and corporate income tax law, on 19 June 2020, the German Government passed the *Corona-Steuerhilfegesetz*[20], a special act that contains several measures to support employees and employers.

2.2. Personal income taxation

2.2.1. *Tax-free benefits*

For individuals, there have not been developed special personal income tax benefits. Basically, there are certain procedural tax measures also for employees which will be analyzed later in this work. The most famous fiscal act to support employees during the pandemic was the release of a unique payment opportunity (*Corona-Sonderzahlung*) which is totally tax-free for employees and completely deductible from the taxable base for companies[21]. This benefit can be paid to each employee, so that this payment does not only address certain groups of employees, but even casual employees[22]. The amount of this special

[17] Expected worldwide debt levels based on the impact of the coronavirus. International Monetary Fund, *Gross debt position* (*IMF*, 1 November 2020) <www.imf.org/external/datamapper/G_XWDG_G01_GDP_PT@FM/ADVEC/FM_EMG/FM_LIDC/PER/DEU> accessed 1 November 2020.

[18] L. Feld, *Rekordschulden in der Coronakrise – kann sich der deutsche Staat das leisten?* (2020) 73 (8) *ifo Schnelldienst* 3.

[19] Bundesministerium der Finanzen, *Kampf gegen Corona: Größtes Hilfspaket in der Geschichte Deutschlands* (*BMF*, 22 May 2020) <www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Schlaglichter/Corona-Schutzschild/2020-03-13-Milliarden-Schutzschild-fuer-Deutschland.html> accessed 8 November 2020.

[20] *Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise* (*Corona-Steuerhilfegesetz*) of 19 June 2020.

[21] § 3 no 11a EStG. The *Einkommensteuergesetz* regulates the taxation of individuals but also of corporations as *lex generalis*.

[22] Casual workers in Germany earn a net salary of € 450 per month.

bonus will be tax-free up to € 1,500, whereas it can be split up in several payments. Payments that exceed this amount will be taxed accordingly. Since this opportunity is aimed at supporting employees who suffer from the economic consequences of the pandemic, this unique payment came into force on 1 March 2020 and is limited till 31 December 2020.

2.2.2. *Treatment of losses*

In addition, the legislator amended further sections in the *Einkommensteuergesetz* (EStG) which led to some temporarily limited changes in the application of the loss carryback[23]. In general, the taxpayer can deduct a limited amount of occurred losses that exceed the total income of the fiscal year from the total income of the previous fiscal year (loss carryback). Exceeding losses that cannot be considered under the application of the loss carryback can be deducted from the total income in the following fiscal years (loss carryforward). In the first step, the loss carryforward is unlimitedly deductible from an amount of up to € 1 m of the total income. In the second step, the remaining loss carryforward can be limitedly deducted with up to 60 % from the total income that exceeds the amount of € 1 m[24]. By the amendment of the new § 111 EStG, the loss carryback for the losses occurred in the fiscal years 2020 and 2021 to the fiscal year 2019 was widened to a maximum amount of € 5 m in the case of single taxation (previously € 1 m) and to € 10 m in the case of joint taxation (previously € 2 m)[25].

On request, for the tax assessment for the fiscal year 2019, a general amount of 30 % of the total income of 2019 can be deducted as loss carryback of the fiscal year 2020 (temporary loss carryback for 2020)[26]. Income from employment[27] cannot be considered in the calculation of the temporary loss carryback for 2020. For the temporary loss carryback to apply, it is necessary that the tax prepayments for 2020 have been reduced to € 0.00.

When the taxpayer is able to prove that his expected loss carryback will exceed the temporary loss carryback, then the general methods regarding the loss carryback and the loss carryforward apply[28].

2.2.3. *Prepayments*

Similarly, the taxpayer can request reductions of his tax prepayments made for the fiscal year 2019[29]. Based on this request, the base for the tax prepayments for the fiscal year 2019 will be decreased by a general amount of 30 % of the taxpayer's total income. Income from

[23] Art 2 *Zweites Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise* (*Zweites Corona-Steuerhilfegesetz*). The new § 110 and § 111 will be added to the EStG.

[24] § 10d EStG determines the application and the limit of both the loss carryback and the loss carryforward as *lex generalis*.

[25] New § 111 para 3 EStG.

[26] New § 111 para 1 EStG.

[27] § 19 EStG.

[28] New § 111 para 2 EStG.

[29] New § 110 para 1 EStG.

employment cannot be included in the total income. For a prepayment reduction for 2019, it is necessary that the prepayments for 2020 have also been lowered to € 0.00.

2.3. Corporate income taxation

2.3.1. *Taxable cash supports*

Parallel to the efforts that have been made to support the employees, some important economic aids have been developed for small companies as well. Although some of these supports have not been of fiscal, but more of financial nature, the benefits for the companies are totally considered in the profit and loss statement in accordance with German Tax Law.

The first major federal support was released on 27 March 2020[30]. The so-called *Corona-Soforthilfe* was aimed at small companies and other entrepreneurs which had a significant decrease in sales and cash positions. Germany provided € 50 bn of its supplementary national budget which could be applied for by the respective Federal States[31]. This kind of benefit was designed to help small companies and other similar businesses as self-employed individuals survive the economic impact of the pandemic and strengthen their economic position. The benefit is taxable and the period of this program was limited to three months.

In general, each resident company with up to 10 (in many Federal States up to 50) employees and self-employed individuals could apply for this benefit program in the case of a severely negative economic impact caused by the coronavirus. Businesses with up to 5 employees were able to file for a unique payment of up to € 9,000 for three months, businesses with up to 10 employees were able to file for a maximum amount of € 15,000 and businesses with up to 50 employees were able to file for a maximum amount of € 30,000. The respective application had to be filed till 31 May 2020. Businesses that had yet been in financial imbalance as of 31 December 2019, were not allowed to file for this support.

Subsequently, on 12 June 2020, Peter Altmaier announced further stimulus for small and medium-sized enterprises that have suffered from the economic consequences of the pandemic and that have been forced to completely close or significant parts of their businesses[32]. This *Überbrückungshilfe* program seamlessly continues and extends the *Corona-*

[30] Bundesministerium der Finanzen, *Weg für Gewährung der Corona-Bundes-Soforthilfen ist frei – Umsetzung durch die Länder steht* (*BMF*, 29 March 2020) <www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2020/03/2020-03-29-PM-Verwaltungsvereinbarung-Soforthilfe.html> accessed 8 November 2020.

[31] Germany's first supplementary budget for 2020 determines the national and federal supports. Bundesregierung, *Nachtragshaushalt 2020 – Mit aller Kraft gegen die Krise* (*BReg*, 27 March 2020) <www.bundesregierung.de/breg-de/themen/coronavirus/nachtragshaushalt-2020-1731686> accessed 8 November 2020.

[32] Bundesministerium für Wirtschaft und Energie, *Altmaier: "Mit Überbrückungshilfe werfen wir den Mittelstandsmotor wieder an"* (*BMWi*, 12 June 2020) <www.bmwi.de/Redaktion/DE/Pressemitteilungen/2020/20200612-altmaier-mit-ueberbrueckungshilfe-werfen-wir-den-mittelstandsmotor-wieder-an.html> accessed 8 November 2020.

Soforthilfe program and was applicable from June to August.[33] Even those companies and businesses that had yet benefited from the *Corona-Soforthilfe* could apply for this program, too, when they have not recovered properly.

The aim of this program was – depending on the extent of the decreasing sales – to cover the fixed costs of the respective business. The application was open to enterprises and small businesses under the condition[34] that the cumulated sales of April and May 2020 are less than 60 % of the cumulated sales compared to April and May of the year 2019. The support covers an amount of

– 80 % of the fixed costs when the sales have decreased about more than 70 %, or
– 50 % of the fixed costs when the sales have decreased between 50 % and 70 %, or
– 40 % of the fixed costs when the sales have decreased between 40 % and 50 % in the month of the current year compared to the month of the previous year.

When the sales are at least 60 % of the sales compared to the same month of the previous year, then the benefit is not applicable for this month. In this program, the fixed costs include rents and leasing costs, running costs as electricity, water or gas, interests, administration costs, royalties, costs for personnel[35] and maintenance costs for necessary assets and other fixed costs as insurance fees. These costs must have been occurred before March 2020, whereas the program was originally applicable till 31 August.

As mentioned earlier, the period of this program was originally limited to the months of June, July and August, although it was extended later. Basically, the maximum amount that could be applied was of € 150,000[36] for those three months. The maximum support for businesses with up to 5 employees was of € 9,000 and for businesses with up to 10 employees € 15,000, respectively. In justified situations, exceptions were possible.

This benefit was, like the *Corona-Soforthilfe*, taxable, so that the received payment raised the base of the corporate income tax. In the case of an overpayment – which means that if an enterprise received an amount that exceeded the incurred costs and when the sales indeed were higher – there was a repayment obligation for the company.

[33] The total volume of this program was limited to € 25 bn and was backed by Germany's second supplementary national budget which was passed on 17 June 2020 and complements the first supplementary national budget. Bundesministerium der Finanzen, *Zweiter Nachtragshaushalt 2020 beschlossen – Kraftvolle und verantwortungsvolle Finanzpolitk zur Überwindung der Corona-Krise* (*BMF*, 17 June 2020) <www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2020/06/2020-06-17-Nachtrag-HH.html> accessed 8 November 2020 and *Zweites Nachtragshaushaltsgesetz 2020*.

[34] Bundesministerium für Wirtschaft und Energie, *Eckpunkte "Überbrückungshilfe für kleine und mittelständische Unternehmen, die ihren Geschäftsbetrieb im Zuge der Corona-Krise ganz oder zu wesentlichen Teilen einstellen müssen"* (*BMWi*, 12 June 2020) <www.bmwi.de/Redaktion/DE/Downloads/E/eckpunkte-ueberbrueckungshilfe.html> accessed 8 November 2020.

[35] Personnel costs will be covered by a general reimbursement of 10 % of the incurred costs of administration, leasing, interests, royalties, maintenance and running costs as well as other costs as insurance costs.

[36] In the case of a group, the maximum benefit of € 150,000 cannot be exceeded. This means that when a legally independent company is directly or indirectly controlled by the same person or by the same enterprise, € 150,000 would be the total benefit applicable for the group.

On 18 September 2020, the German Government announced the extension of the already existing *Überbrückungshilfe* (whose name was then changed into *Überbrückungshilfe I*) and introduced the continuous *Überbrückungshilfe II*[37]. This program serves as prolongation and is applicable for the months from September till December 2020. Some aspects of the program have been modified in order to facilitate the application and the accessibility for SMEs. In this context, the concerned businesses are able to apply for the *Überbrückungshilfe II* program when they have suffered from a decrease in sales of at least 50 % in two cohesive months in the period from April to August 2020 compared to the respective months in 2019 or when the business has suffered from an average decrease in sales of at least 30 % in the period from April to August 2020 compared to the respective months in 2019. The limited benefits of € 9,000 (for businesses with 5 employees) and € 15,000 (for businesses with 10 employees, respectively) was eliminated. Furthermore, the percentages of the covered costs have been raised or the decrease in sales has been adapted as follows:
– 90 % of the fixed costs when the sales have decreased about more than 70 %, or
– 60 % of the fixed costs when the sales have decreased between 50 % and 70 %, or
– 40 % of the fixed costs when the sales have decreased about more than 30 % in the month of the current year compared to the month of the previous year and
– a general compensation of 20 % for the incurred personnel expenses.

The maximum benefit for each month is € 50,000, or, for the period from September to December, in total € 200,000.

Due to the Government order of 28 October, many businesses, especially from gastronomy and hotel industry, had to completely or partially close their businesses[38]. Consequently, the Government announced another federal support, the so-called *außerordentliche Wirtschaftshilfe* or simply *Novemberhilfe*, which was principally aimed at businesses which were expected to suffer from the new lockdown restrictions[39]. The program has a volume of € 10 bn and is accessible from 25 November 2020 for companies and similar businesses that have been directly or indirectly affected by the new restrictions. In this context, the term 'directly affected' includes all the businesses (also public institutions) that had to completely close due to the order of 28 October. On the other hand, the term 'indirectly affected' includes all the businesses which habitually generate revenues of at least 80 %

[37] Bundesministerium für Wirtschaft und Energie, *Überbrückungshilfe wird verlängert, ausgeweitet und vereinfacht* (*BMWi*, 18 September 2020) <www.bmwi.de/Redaktion/DE/Pressemitteilungen/2020/09/20200918-ueberbrueckungshilfe-wird-verlaengert-ausgeweitet-und-vereinfacht.html> accessed 14 November 2020.

[38] Order of the German Government and the German Federal States (n 4).

[39] Bundesministerium der Finanzen, 'Außerordentliche Wirtschaftshilfe November – Details der Hilfen stehen' (*BMF*, 5 November 2020) <www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2020/10/2020-11-05-PM-ausserordentliche-wirtschaftshilfe-november.html> accessed 15 November 2020; Bundesministerium für Wirtschaft und Energie, *Maßnahmenpaket für Unternehmen gegen die Folgen des Coronavirus* (*BMWi*, 23 November 2020) <www.bmwi.de/Redaktion/DE/Downloads/M-O/massnahmenpaket-fuer-unternehmen-gegen-die-folgen-des-coronavirus.html> accessed 23 November 2020.

from customers which are directly affected by the order of 28 October (suppliers)[40]. The *Novemberhilfe* provides a weekly grant of 75 % of the weekly average sales of November 2019[41].

It is important to note that other federal benefits will be credited on the *Novemberhilfe* program what means that the payments received in November under the *Überbrückungshilfe I* and *II* as well as the Kug payments for November will be deducted from the new support. This is the same for sales generated in November 2020, so that merely a percentage of up to 25 % compared to the sales of November 2019 will not be considered in the credit. Sales that exceed the 25 % threshold will be credited partially.

For restaurants, there are certain exceptions when food and beverage are offered for take away. The granted benefits are limited to 75 % of the sales of the same period of 2019 and which were subject to the total VAT rate[42]. In so far, all the sales generated for take away are excluded from this calculation, since they are subject to the lower VAT rate[43]. On the contrary, there is no threshold for a sales credit of the take away sales, so that these cannot be deducted from the *Novemberhilfe* in order to support the take away services of the restaurants even if they exceed a percentage of 25 % as mentioned above.

Like the *Corona-Soforthilfe* and the *Überbrückungshilfe* (*I* and *II*), the *Novemberhilfe* is fully taxable and will therefore be totally considered in the profit and loss calculation according to German Tax Law.

As mentioned earlier, these programs do not present purely fiscal measures. Basically, there have not been actions like direct tax reductions or specific income exemptions to reduce the tax charge of the companies. But even the federal benefits under the abovementioned programs directly affect, on the one hand, the cash positions of the companies and, on the other hand, are totally considered for fiscal purposes.

2.3.2. Deduction of financial *expenses*

Furthermore, for business income, the maximum deductibility limit of financial expenses has been modified[44]. Previously, the maximum deductibility was limited to € 100,000. The modified deductibility limit was then raised to € 200,000[45]. In this context, the legislator did

[40] For a group, more than 80 % of the generated group revenues ought to result from intragroup companies which are directly or indirectly affected.

[41] State funding of a volume of € 1 m is subject to Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid [2013] OJ L352/1. State aid exceeding this amount is subject to art 107 (2) b) of the Treaty on the Functioning of the European Union.

[42] Food and beverage consumed in the restaurant are, basically, subject to the total VAT rate of 19 % according to § 12 para 1 UStG.

[43] Food and beverage for take away reasons are, basically, subject to the reduced VAT rate of 7 % according to § 12 para 2 no 1 UStG.

[44] § 8 no 1 GewStG.

[45] Art 5 *Zweites Corona-Steuerhilfegesetz*.

not restrict the modification to a certain timeframe. Based on this and on the assumption that many businesses will have to contract more debts in order to survive the financial effect of the pandemic, a widened deductibility limit of finance costs will represent a proper measure to help businesses consider their financial burden in income taxation not only in the current, but also in the future years. Generally, the addition of certain expenses concerning the taxable base of the *Gewerbesteuer* is based on the objective to tax business income independently of its funding. That means that interests which have lowered the earnings will partially be added to the taxable base since costs of equity are not deductible neither.

2.3.3. Treatment *of losses*

As explained under 2.2.2., the regulations of the *Einkommensteuergesetz* as *lex generalis* primarily apply to corporate taxation. Hence, the treatment of losses for purposes of corporate taxation is equal to the widened application of the loss carryback and the loss carryforward[46]. Consequently, the same conditions of the temporary loss carryback are applicable. The loss carryback to the fiscal year 2019 is temporarily limited to an amount of € 5 m for the losses occurred in the fiscal years 2020 and 2021.

On request, for the tax assessment for the fiscal year 2019, a general amount of 30 % of the total income[47] of 2019 can be deducted as loss carryback of the fiscal year 2020 (temporary loss carryback for 2020). For the temporary loss carryback to apply, it is necessary that the tax prepayments for 2020 have been reduced to € 0.00. When the taxpayer is able to prove that his expected loss carryback will exceed the temporary loss carryback, then the general methods regarding the loss carryback and the loss carryforward apply.

For purposes of the *Gewerbesteuer*, there is no loss carryback, but only a possible loss carryforward to the following fiscal years[48].

2.3.4. Pre*payments*

Prepayments for purposes of the *Körperschaftsteuer* can also be modified by the tax authorities. Based on a request, the base for the tax prepayments for the fiscal year 2019 will be decreased by a general amount of 30 % of the taxpayer's total income. For a prepayment reduction for 2019, it is necessary that the prepayments for 2020 have also been lowered to € 0.00.

[46] § 8 para 1 cl 1 KStG as general norm determines that the regulations of the *Einkommensteuergesetz* apply to corporate taxation.

[47] On the contrary to the different sources of income for individuals, like income from employment which has to be eliminated from the total income for purposes of the treatment of losses, corporate income taxation does not know about these different sources. Corporations just have one class of income, the corporate income. For the loss carryback it is important because the total income of corporations is literally the total amount of income generated by corporate business activities. *Lex specialis* of § 8 para 2 KStG.

[48] § 10a GewStG.

3. Indirect taxation

3.1. VAT

Even in the scope of indirect taxation (VAT), there have been developed some measures – both of systematic and procedural nature – to counteract the economic damage of the pandemic. From the systematic point of view, two major important changes have been implemented, although of temporary character. In German VAT law (*Umsatzsteuergesetz*), there are, basically, two tax rates[49].

The general tax rate of 19 % applies to most of the taxable business cases in accordance with § 12 para. 1 UStG. The reduced tax rate of 7 % according to § 12 para. 2 UStG applies to exceptional cases as accommodation services or food and beverage for take away.

On 30 June 2020, a temporary reduction of the VAT rates was announced[50]. With effect from 1 July 2020, the general VAT rate of 19 % was decreased to 16 % and the reduced VAT rate of 7 % to 5 %. The period is limited to six months, so that the VAT reduction exclusively applies till 31 December 2020[51]. The aim of this temporary regulation was that businesses should directly pass on this benefit to their customers. Obviously, this modification has not had any impact on business-to-business transactions since the net amount has remained the same and based on the fact that the input tax is deductible and the output tax will finally be imposed on the customer. Consequently, only the customer has noticed the VAT implementation due to the decreased tax burden. According to German Finance Minister Olaf Scholz, this effect was desired by the German Government in order to encourage more consumption after the first lockdown and to reach an economic impulse assuming that the customers will realize their future spending decisions in the current year. The German Government has repeatedly stated that the VAT reduction is of temporary character in order to avoid an ineffectiveness of the purchase incentive for the customers.

3.2. Tobacco tax

For tobacco tax purposes (*Tabaksteuergesetz*)[52], nothing has changed, so that the applicable law has remained untouched.

[49] The German tax rates for intracommunity deliveries or services are also of importance according to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L347/1.

[50] Bundesministerium der Finanzen, *Umsatzsteuer; Befristete Absenkung des allgemeinen und ermäßigten Umsatzsteuersatzes zum 1. Juli 2020*, III C 2 – S 7030/20/10009 :004, 2020/0610691, 30.06.2020.

[51] Based on art 3 *Zweites Corona-Steuerhilfegesetz* and § 27 para 1 UStG.

[52] § 2 para 2 TabStG.

4. Procedural tax law

4.1. Introduction

General tax procedures regarding deferrals, enforcements, late payment fines and default fines and interests for deferred payments are regulated in the fourth, fifth and sixth part of the *Abgabenordnung* ('AO').

4.2. Direct taxation

In order to relieve corporations, employed and self-employed individuals as well as other similar businesses of payable federal tax charges administrated by the Federal States[53], their corresponding deferrals and tax enforcements, the legislator passed certain suspensions and modification opportunities for tax prepayments and tax advance returns[54]. Taxpayers which have been directly and significantly suffering from the consequences of the pandemic are able to request for deferrals of federal tax liabilities[55] and for modifications of the prepayments[56] for personal income tax[57] and corporate income tax based on the disclosure of their books until 31 December 2020. Those requests cannot solely be rejected when the taxpayer is not able to properly prove the incurred financial damage in terms of value. There are no strict requirements necessary for the verification of the conditions for the applied deferrals. A waiver of interests for deferred payments[58] is also possible[59].
Requests for deferrals of tax liabilities payable after 31 December 2020 as well as requests for modifications of prepayments concerning corporate income tax and personal income tax arising after 31 December 2020 can only be considered under special conditions[60].
When the tax authorities are aware that the taxpayer has been directly and significantly affected by the pandemic, then they are entitled to refrain from the execution of deferrals

[53] Federal taxes in Germany are: *Umsatzsteuer* (VAT), *Körperschaftsteuer* (corporate income tax), *Einkommensteuer* (personal income tax) and *Solidaritätszuschlag* (solidarity surcharge which is levied on both the corporate income tax and on the personal income tax).

[54] Bundesministerium der Finanzen, *Steuerliche Maßnahmen zur Berücksichtigung der Auswirkungen des Coronavirus (COVID-19/SARS-CoV-2)*, IV A 3 – S 0336/19/10007 :002, 2020/0265898, 19.03.2020.

[55] § 222 AO.

[56] § 164 AO.

[57] Bundesministerium der Finanzen, *Verlängerung der Erklärungsfrist für vierteljährliche und monatliche Lohnsteuer-Anmeldungen während der Corona-Krise*, IV A 3 – S 0261/20/10001 :005, 2020/0397950, 23.04.2020. Income tax prepayments have to be declared monthly or quarterly by the employers or by its authorized tax consultant. In this case and with no fault of their own, the legislator has entitled the tax authorities of the Federal States to grant an extension of the period for the prepayment declaration in accordance with § 109 para. 1 AO. The extension is limited to two months.

[58] § 234 AO.

[59] Bundesministerium der Finanzen (n 54) para 1.

[60] Ibid. para 2.

for payable tax liabilities until 31 December 2020[61]. Late payment fines[62] related to these payable taxes until 31 December 2020 have to be remitted, whereas the tax authorities are entitled to communicate the remissions on the basis of general orders[63].

For those parties which are solely indirectly affected, the general norms will apply[64].

Parallel to the federal taxes, the same measures were announced for the taxes levied by the respective Federal States on 19 March 2020[65], especially the *Gewerbesteuer*, which is imposed by the communities where businesses are located[66]. When the respective tax authority takes note of a decreased taxable base for *Gewerbesteuer* purposes, it will be entitled to modify the prepayments of the affected taxpayer for the fiscal year, especially when the tax authority has modified the prepayments for personal income tax and corporate income tax[67].

Corporations and businesses which have been directly and significantly suffering from the consequences of the pandemic are able to request for a reduction of the taxable base[68] for purposes of prepayments concerning the *Gewerbesteuer* based on the disclosure of their books until 31 December 2020. Those requests cannot solely be rejected when the taxpayer is not able to properly prove the incurred financial damage in terms of value. When the tax authorities determine the taxable base for purposes of prepayments concerning the *Gewerbesteuer*, the corresponding community is legally obliged to assess the resulting prepayments[69].

Requests for tax deferrals and remissions must generally be submitted to the respective community and only to the tax authorities when the respective community has not been entitled to assess and impose the *Gewerbesteuer*[70].

4.3. Indirect taxation

For VAT purposes, the general prepayment period is quarterly[71] or, when the assessed VAT charge of the previous fiscal year exceeds an amount of € 7,500, monthly[72]. In both

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[61] Ibid. para 3.

[62] § 240 AO.

[63] Bundesministerium der Finanzen (n 54) para 3.

[64] Ibid. para 4.

[65] Order of the Finance Ministries of the Federal States of Germany of 19 March 2020, *Gleich lautende Erlasse der obersten Finanzbehörden der Länder zu gewerbesteuerlichen Maßnahmen zur Berücksichtigung der Auswirkungen des Coronavirus (COVID-19/SARS-CoV-2) vom 19. März 2020*.

[66] § 1 GewStG.

[67] § 19 para 3 GewStG and Guidelines to the *Gewerbesteuer* 19.2 para 1 cl 5 GewStR.

[68] The tax authority merely determines the taxable base for purposes of the *Gewerbesteuer*, whereas the respective community imposes the tax on the taxpayer.

[69] § 19 para 3 cl 4 GewStG.

[70] § 1 GewStG and Guidelines to the *Gewerbesteuer* 1.6 para 1 GewStR.

[71] § 18 para 2 cl 1 UStG.

[72] § 18 para 2 cl 2 UStG.

cases, the prepayments have to be declared until the tenth day after the expiration of the submission period (monthly or quarterly)[73]. The tax authorities are entitled to extend the submission period[74] for one month by order[75]. Businesses which have to submit monthly VAT declarations and which want to apply for the extended period, have to pay a special advance payment[76] which is calculated as one eleventh of the total VAT prepayments of the previous fiscal year[77]. Businesses which have to submit quarterly VAT declarations, also have to apply for this extension, but do not have to transfer a special advance payment. Since the VAT is a federal tax in Germany but administrated by the respective Federal States, the tax authorities have been entitled to refund the special advance payments in order to support the businesses affected by the pandemic. In this context, it is important to note that the duty of the special advance payment does not become invalid, but the refund merely serves as deferral.

5. International taxation

5.1. Introduction

In the context of international taxation, no special measures have been taken. Relevant – but temporary – steps merely aimed at employees.

5.2. Nexus of permanent establishment according to art. 5 OECD MC

Germany is part of the OECD and therefore designs its double tax treaties based on the OECD Model Tax Convention on Income and on Capital (OECD MC). This is not only important for aspects concerning the applicable rules of permanent establishment, dividends, capital gains and royalties, but also in the context of income from employment. One of the most important aspects in cross-border business activities is the assignation of a taxable base in accordance with art. 7 OECD MC to a permanent establishment of a non-resident company in the Source State. The concept of permanent establishment is defined in art. 5 OECD MC and has not been modified in the pandemic, neither the basic rules by the OECD nor the application by its Member States.

Since SARS-CoV-2 has been classified as worldwide pandemic by the WHO earlier this year, many jurisdictions decided to adapt temporary measures as long as the coronavirus remains considered as pandemic. Therefore, it can be assumed that the general application

[73] § 18 para 1 UStG.

[74] 'Dauerfristverlängerung'.

[75] § 18 para 6 UStG and § 46 UStDV.

[76] *Umsatzsteuersondervorauszahlung*.

[77] § 47 para 1 UStDV.

of art. 5 para. 1 OECD MC has not changed due to the temporary issues of the pandemic[78]. This is also the opinion of the OECD. The OECD Secretariat also stressed this point in its Analysis of Tax Treaties and the Impact of the COVID-19 Crisis of 3 April 2020. Due to *force majeure* of the pandemic and the subsequent government directives with its travel restrictions, the employee is forced to work abroad. This will unlikely result in a new habit, so that remote working would not create a permanent establishment due to the lack of permanency and continuity. Under normal circumstances, office rooms of a company would also be accessible to the employees[79].

Furthermore, the 'at the disposal'-requirement will not be fulfilled here. When an employee is working abroad, under the circumstances caused by the pandemic, the location of the employee will not be at the disposal of the enterprise. First, the mere fact that an employee is working from home for his employer does not mean that his home is at the disposal of the enterprise. Therefore, this would not create a permanent establishment. Second, the location where the employee is working due to the circumstances of the pandemic must be used in a continuous manner and it is also required by the enterprise to work remotely in order to qualify this location as permanent establishment[80].

5.3. Bilateral agreements for commuters working remotely

There are no fiscal discrepancies when an employee is situated and working in the same State where he derives income from employment. In this scenario, the Source State is the Residence State too and the domestic law of the respective jurisdiction exclusively applies. Besides the border controls announced in March 2020, Germany also agreed on further fiscal treatments for employees resident of a neighbor country but working in Germany or *vice versa*.

Art. 15 OECD MC assigns the taxing rights to the Source and to the Residence State (place of activity principle). According to art. 15 para. 2 OECD MC, non-resident employees deriving income from employment can only be taxed in the Source State when the employer is resident of the Source State, or when an employer's permanent establishment by which the income is borne is located in the Source State, or when the non-resident employee is present in the Source State for more than 183 aggregated days. This just applies to employ-

[78] As long as the pandemic is classified as temporary, the term 'permanency' will not be accomplished under the conditions of art 5 para 1 OECD MC. OECD, *Model Tax Convention on Income and on Capital* (OECD Publishing 2017) commentary n 28 on art 5 para 1.

[79] OECD, *OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis* (*OECD*, 3 April 2020) <www.oecd.org/coronavirus/policy-responses/oecd-secretariat-analysis-of-tax-treaties-and-the-impact-of-the-covid-19-crisis-947dcb01/> para 9 accessed 20 November 2020.

[80] Ibid. para 8; OECD (n 78) commentary n 18 on art 5 para 1.

ees who are present in the Source State for more than 183 aggregated days, whereby these days are simply calculated by the 'days of physical presence'-method[81].

This matter has become more relevant due to the abovementioned border closures and travel restrictions. Due to these circumstances, an expanded period of remote working can trigger unprecedented issues in cross-border tax affairs for non-resident employees when the 183-day-rule is surpassed. This could be possible when remote working employees are urged to stay abroad. For this reason, the German Government has arranged additional agreements with some EU neighbor countries as Belgium[82], the Netherlands[83], Austria[84], France[85] and Luxembourg[86].

In these agreements which refer to the corresponding double tax convention, Germany and the Contracting States have stipulated an exemption from Source State taxation concerning the additional days spent working remotely by the non-resident employee at least until 31 December 2020. Accordingly, additional days spent abroad by the non-resident

[81] OECD (n 78) commentary n 5 on art 15 para 2. The calculation of the days on which the non-resident is present in the Source State is simply based on the fact if the employee is present or not. See also commentary n 4 on art 15 para 2 for 183 days which concern two fiscal years. In this case, it does not matter if the 183 days are overlapping two different years as long as they are coherent in a timeframe of twelve consecutive months.

[82] Agreement between the Federal Republic of Germany and the Kingdom of Belgium on the taxation of commuters of 6 May 2020. Bundesministerium der Finanzen, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und dem Königreich Belgien vom 6. Mai 2020; Besteuerung von Grenzpendlern*, IV B 3 – S 1301-BEL/20/10002 :001, 2020/0458382, 07.05.2020. And its third prolongation of 28 August 2020, *Dritte Verlängerung der Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und dem Königreich Belgien vom 6. Mai 2020; Besteuerung von Grenzpendlern*, IV B 3 – S 1301-BEL/20/10002 :001, 2020/0853868, 28.08.2020.

[83] Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands on the taxation of commuters of 6 April 2020. Bundesministerium der Finanzen, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande vom 6. April 2020, Besteuerung von Grenzpendlern*, IV B 3 – S 1301-NDL/20/10004 :001, 2020/0348934, 08.04.2020. And its prolongation of 29 October 2020, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande vom 6. April 2020 zur Besteuerung von Grenzpendlern; Verlängerung*, IV B 3 – S 1301-NDL/20/10004 :001, 2020/1103978, 29.10.2020.

[84] Agreement between the Federal Republic of Germany and the Republic of Austria on the taxation of commuters of 15 April 2020. Bundesministerium der Finanzen, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und der Republik Österreich vom 15. April 2020; Besteuerung von Grenzpendlern und Grenzgängern*, IV B 3 – S 1301-AUT/20/10002 :001, 2020/0379571, 16.04.2020. And agreement between the Federal Republic of Germany and the Republic of Austria on the fiscal treatment of employee wages and of public servants working remotely and of short-time allowance and similar supports of 27 October 2020. Bundesministerium der Finanzen, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und der Republik Österreich vom 27. Oktober 2020; Steuerliche Behandlung des Arbeitslohns von Arbeitnehmern sowie von im öffentlichen Dienst Beschäftigten im Homeoffice sowie Kurzarbeitergeld und Kurzarbeitsunterstützung*, IV B 3 – S 1301-AUT/20/10002 :001, 2020/1109125, 30.10.2020.

[85] Agreement between the Federal Republic of Germany and the French Republic on the taxation of commuters of 13 May 2020. Bundesministerium der Finanzen, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und der Französischen Republik vom 13. Mai 2020; Besteuerung von Grenzpendlern*, IV B 3 – S 1301-FRA/19/10018 :007, 2020/0503105, 25.05.2020. And its prolongation of 23 October 2020, *Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und der Französischen Republik vom 13. Mai 2020 zur Besteuerung von Grenzpendlern; Verlängerung*, IV B 3 – S 1301-FRA/19/10018 :007, 2020/1058429, 23.10.2020.

[86] Agreement between the Federal Republic of Germany and the Grand Duchy of Luxembourg on the taxation of commuters of 7 October 2020. Bundesministerium der Finanzen, *Verständigungsvereinbarung zwischen der Bundesrepublik Deutschland und dem Großherzogtum Luxemburg vom 7. Oktober 2020; Besteuerung von Grenzpendlern nach Luxemburg*, IV B 3 – S 1301-LUX/19/10007 :002, 2020/1055401, 20.10.2020.

employee working remotely which are solely spent abroad due to regulations and restrictions of the Residence State and which would not have been spent abroad if such regulations or restrictions had not been made, will be exempted from taxation in the Source State (factual fiction). The concerned employees are obliged to document those days for both the Source State and the Residence State.
This will not apply to situations where a non-resident employee works remotely in a third country or when he habitually works remotely based on the agreements set down in his labor contract.
These agreements are of temporary character and solely apply to these circumstances caused by travel restrictions and limited mobility for the affected commuters. Nevertheless, for the future, it can be assumed that more remote working aspects will find its way into bilateral or multilateral conventions when the labor behavior has fundamentally changed. Many multinationals have offered their staff to permanently work remotely and even have canceled rent contracts of office rooms to safe costs. The cost aspect was primarily focused, but due to the worldwide lockdowns and curfews, people's behavior regarding working, shopping and other aspects as practicing sports remotely has generally changed to more remote activities, so that multinationals and other enterprises could proceed a fundamental change in labor means and could tend to rationalize large office rooms or even cancel rent contracts to limit the office rooms to the minimum due to less occupancy.

5.4. Country-by-Country-Reporting

Furthermore, the Federal Finance Ministry has been entitled by the German Government to order regulations concerning Country-by-Country-Reporting (CbCR) in order to fulfill extensions for notifications regarding cross-border tax planning activities passed by the European Union[87].

6. Further measures

The fiscal measures have been analyzed earlier in this work, but other supports have also been developed by the German Government. This mainly concerns financial stimulus as simplified accessibility to the federal *KfW*[88] bank loans and the new federal fund, the so-called *Wirtschaftsstabilisierungsfonds* ('WSF').
The WSF consists of a total volume of € 600 bn and was established in order to stabilize the domestic economy during and after the pandemic. This fund is not at aimed at special businesses, but to all those whose bankruptcy would cause a severe damage for the Ger-

[87] Art 4 *Corona-Steuerhilfegesetz*.

[88] *Kreditanstalt für Wiederaufbau*.

man business location or the labor market. The following two measures are applicable. First, public guarantees in order to protect bank loans, credit lines and liability backed financial products and, second, strengthen the equity of affected companies. A combination of both measures is possible too. Under this fund, € 400 bn are assigned to State guarantees, € 100 bn to direct federal shareholding and the remaining € 100 bn to refinancing programs of the *KfW*[89].

Parallel to the WSF, the public *KfW* bank developed a special credit program[90] amid the pandemic and is able to grant various loans to companies and similar businesses which have been suffering from the consequences of the coronavirus. Since the *KfW* is a federal facility, its credits are guaranteed by the State which enables the affected creditor a significantly simplified accessibility to its loans. The most important vehicle of its special credit program which will be accessible until 30 June 2020 is the *KfW-Schnellkredit*[91] (fast credit) which is totally secured by the State. It is applicable to companies and other businesses which have been at least existing since January 2019 and the maximum credit volume for each business is of 25 % of the total sales and revenues of 2019. The maximum amounts are € 300,000 for companies and businesses with up to 10 employees, € 500,000 for companies and businesses with between 10 and 50 employees and € 800,000 for companies and businesses with more than 50 employees. The company must prove that its financial difficulties result from the pandemic and that it was in a stable financial situation as of 31 December 2019. The interest rate of 3 % is fixed for ten years, whereby the first two years are relieved from the redemption period. Furthermore, it is necessary that the company can at least show one year of profit between 2017 and 2019 (in the case of foundation prior to 2019).

Additionally, the *KfW-Unternehmerkredit* can be applied for by companies that have been existing for more than five years and the *ERP-Gründerkredit* can be applied for by companies that have been existing for at least three years. The maximum amount of the credit volume for both the *KfW-Unternehmerkredit* and the *ERP-Gründerkredit* is of € 100 m for each company, but generally limited to 25 % of the total sales and revenues of 2019, twice the labor costs of 2019, the current finance requisitions for the next 18 months of small

[89] Bundesministerium für Wirtschaft und Energie, *Corona-Virus – Wirtschaftsstabilisierungsfonds (WSF)* (*BMWi*, 21 November 2020) <www.bmwi.de/Redaktion/DE/Coronavirus/WSF/wirtschaftsstabilisierungsfonds.html> accessed 21 November 2020 and Bundesministerium für Wirtschaft und Energie, *Wirtschaftsstabiliserungsfonds* (*BMWi*, 3 April 2020) <www.bmwi.de/Redaktion/DE/Artikel/Wirtschaft/Corona-Virus/unterstuetzungsmassnahmen-faq-08.html> accessed 21 November 2020.

[90] State funding subject to articles 107 and 108 of the Treaty on the Functioning of the European Union.

[91] For the entire credit program see *KfW*, *KfW-Corona-Hilfe: Kredite für Unternehmen* (*KfW*, 22 November 2020) <www.kfw.de/inlandsfoerderung/Unternehmen/KfW-Corona-Hilfe/> accessed 22 November 2020 and Bundesministerium für Wirtschaft und Energie, *KfW-Sonderprogramm wird verlängert und erweitert – KfW-Schnellkredit nun auch für Kleinstunternehmen* (*BMWi*, 6 November 2020) <www.bmwi.de/Redaktion/DE/Pressemitteilungen/2020/11/20201106-kfw-sonderprogramm-wird-verlaengert-und-erweitert-kfw-schnellkredit-nun-auch-fuer-kleinstunternehmen.html> accessed 22 November 2020.

and medium-sized companies or for the next 12 months of big companies, or 50 % of the total indebtedness, or 30 % of the total assets of the entire group for credits exceeding a volume of € 25 m. The State secures the credits for small and medium-sized companies to 90 % and for big companies to 80 %.
Finally, the *KfW-Konsortialfinanzierung* (syndicated loan) is applicable for medium-sized and big companies, whereby the *KfW* covers 80 % of the risks, restricted to a maximum percentage of 50 % of the total indebtedness, or 30 % of the total group assets. The risk capital consists of at least € 25 m and is limited to 25 % of the total sales and revenues of 2019, twice the labor costs of 2019, or the current finance requisitions for the next 12 months.

7. Conclusions

The coronavirus pandemic has dramatically been damaging the entire global cross-border economy for almost one year but has led to more and faster digitalization. Many employers and employees are still suffering from the economic consequences of the national lockdowns, even Germany as the biggest European economy and a contraction of new debts was considered as the only way out of a longer and severe recession. In a short-term view, this might seem legitimate to alleviate the economic damages caused by the lockdowns and the haltered economy. It is evident, that these federal supports can only be financed by public debt. These new debts can only be reduced, if so, in the future by those businesses which will survive the impact of the pandemic. This will undoubtedly result in higher or additional taxes (direct or indirect) or in additional social costs.
As mentioned initially, the great advantage of the Kug could merely be a temporary effect before permanent job claims will appear. Taking into consideration that not solely Germany will face a double dip recession, it can be assumed that worldwide unemployment rates will significantly raise. Furthermore, additional federal supports like the current ones can be expected in 2021.
By passing the *Corona-Steuerhilfegesetz* and the *Zweites Corona-Steuerhilfegesetz*, the German Government has reacted quickly and properly to the economic impact of the coronavirus by amending either new regulations or by adapting changes to current tax law. These amendments and modifications concern procedural tax law but also the fiscal profit and loss accounting.
From the perspective of direct taxation, all the measures realized in the legal frame as the reduction of prepayments or widened opportunities regarding the application of loss carryback and loss carryforward have helped support the affected taxpayer and strengthen his cash flow as fast as possible during the pandemic. A strong cash position is the only way to survive a crisis. On the other side, the legislator even knows about the long-term burden of new debts. That is why the Government has limited cash payments as the *Corona-Soforthilfe* for employees to certain amounts (€ 1,500) or to determined timeframes

(most of them until 31 December 2020). A great benefit is that this incentive is totally tax-free and, therefore, the employee receives 100 % of the considered payment.

The payments under the *Corona-Soforthilfe* and both the *Corona-Überbrückungshilfe I* and *II* are also proper vehicles to strengthen the cash positions of the affected businesses, although they are totally taxable. The legislator has used all the legally possible tools to widen the scope of action of the resident business, also by the remission of fines, the deferral of taxes and the extensions of tax submissions. On the other hand, it is obvious that the legislator should at least use those common procedural tools to support the affected taxpayers since the legal frame is not overstrained in this case.

Other measures as temporary VAT reductions serving as consumption incentive for consumers are a soft implementation of a certain economic stimulus, but it can be assumed that this reduction is, indeed, of temporary character. VAT revenues represent an important percentage in public household. Based on this fact, it can be expected that the VAT rate will, at least, turn back to the previous levels of 19 % and 7 % – if not higher – to adequately compensate the loss in public household.

A critical assessment demonstrates that especially the vehicles used under procedural tax law do not represent new legal provisions, since merely already existing rules have been temporarily widened in their scope of application. On the other hand, in order to strengthen the cash positions of the affected taxpayer, the Government has developed and released various instruments which, at first sight, obviously support the affected businesses and its employees, but, at second sight, lead to an increase of public debt which has to be seen critically.

Summarized, it can be said that the approaches realized by the Government have helped the affected businesses in a short-term view by strengthening the cash positions and, in consequence, avoiding bankruptcies. In a crisis, the only way to survive is liquidity. But the base for the recent federal supports has been reached by the German Government due to the stable household of the last years and, furthermore, due to the contraction of new debts.

The most interesting point in international taxation refers to remote working and its implication for commuters. In this scenario, it could be possible that the Contracting States of the temporary agreements on the treatments of additional days of remote working in the Source State renegotiate the permanent arrangements that assign the taxing rights for non-resident employees working remotely in the Source State. This issue could lead to cross-border tax competition for remote workers if a Contracting State recognizes a significant benefit in offering – or trying to offer – kind of exemptions in this case.

On the other hand, even the federal refinancing program carried out by the *KfW* represents a vehicle of national remediation. By granting the *KfW-Schnellkredit* with its interest rate of 3 %, the Government is possibly – despite the big credit risk default – making a

good deal since the deposit facility rate of the ECB is far lower[92]. This would result in an arbitrage-transaction based on the negative interest rates granted by the ECB and on the positive interest rate of 3 % charged on the national creditors.
This has to be seen, at least, critically since also the other alternative, direct national shareholding[93], should not serve as remediation due to the potential influence[94] on economic decisions of the private sector given to the Government. The global travel and tourism sectors have been hit the most. Struggling German big players as *Lufthansa* and *TUI* have been refinanced by *KfW* credits and direct federal shareholding so that these stock exchange listed companies are partially in the hands of the Government – at least – for the next years. This could discourage private investors due to haltered dividends or too much national influence on the economic decisions of the management boards.

[92] Deposit facility rate is of - 0.50 %. European Central Bank, *Monetary policy decisions* (*ECB*, 12 September 2019) <www.ecb.europa.eu/press/pr/date/2019/html/ecb.mp190912~08de50b4d2.en.html> accessed 23 November 2020.

[93] See stock market performance of *Commerzbank AG* and *Deutsche Telekom AG* over the last years.

[94] Or at least veto rights.