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Federal Cabinet releases draft bill for post-covid stimulus package

The German Federal Cabinet has released the draft bill on the crisis management package aimed at mitigating the economic impact of the COVID 19 pandemic.

The bill is due to have its first reading at the Bundestag on 19 June 2020, with the 2nd /3rd readings and the final decision of the Bundesrat expected on 29 June 2020. On this timetable the publication in the Federal Law Gazette should occur on 30 June 2020, with the law becoming effective on 1 July 2020.

The bill contains a number of amendments to the original draft document of the Federal Ministry of Finance as well as some additions.

Summary of the tax measures:

- Statutory increase of the amount of **losses available for tax carry-back** for the years **2020 and 2021** to a maximum of **EUR 5 million or EUR 10 million** (for jointly assessed couples); in this regard a mechanism is being introduced to allow for this carry-back to become financially effective in the 2019 tax return:
  - **Adjustment of tax pre-payments for the 2019 assessment period:** A **flat-rate deduction of 30%** of the total amount of income on which the tax base for the 2019 pre-payments was calculated will be available upon application. The prerequisite is that the pre-payments for 2020 have been reduced to €0. The temporary loss carry-back will not apply to income from employment under Section 19 Income Tax Act ("ITA"). As an alternative to the flat-rate deduction of 30%, the total amount of income, on which the 2019 pre-payment assessments were based, may instead be reduced by a **higher loss carry-back**, provided the taxpayer can produce evidence of the probable loss carry-back. According to the explanatory memorandum to the government draft (page 26/27), such evidence should be provided through detailed documentation (e.g. on the basis of business management analyses). Neither the lump-sum reduction nor the reduction by a higher amount established by the taxpayer may exceed € 5 million or € 10 million (for jointly assessed couples). The provision will apply to the 2019 period of assessment. According to the explanatory memorandum issued with the original draft proposal (as of 10 June 2020 - page 25), the provisional loss carryback for 2020 is to replace the flat-rate loss carry-back of 15% set out on the Federal Ministry of Finance letter of 24 April 2020 (in relation to trading/agricultural/self-employed/rental income), which is to be repealed when the bill becomes law.
  - **Provisional loss carry-back for 2020:** Upon application an amount of **30% of the total amount of income for the 2019** assessment period can be deducted as **a loss carry-back from 2020** when the 2019 tax is assessed, provided the pre-payments for the 2020 period of assessment have been reduced to €0 (provisional loss carry-back for 2020). Income from employment under Section 19 ITA contained in the total amount of income will however be excluded. Instead of the flat-rate reduction of 30%, a higher loss carry-back will also be permitted provided the taxpayer can provide appropriate evidence for this higher amount. According to the explanatory memorandum to the government draft (page 27), such evidence should be provided through detailed documentation (e.g. on the basis of business management analyses). The provisional loss carry-back may not exceed the maximum

amounts of € 5 million or € 10 million (for jointly assessed couples). Where the reduction of pre-payments for the 2019 period of assessment, which was based on an expected loss carry-back for 2020, subsequently leads to additional tax payments when 2019 tax is assessed, the taxpayer may apply for a tax deferment, whereby interest on the deferral will not be levied. Where the taxpayer applies for a loss carry-back under these provisions he will be obliged to file an income tax return for the 2020 period of assessment. Within the framework of the 2020 assessment procedure, the assessment for 2019 will then be adjusted to take into account the loss actually incurred in 2020 which is available for carry-back.

- Increase of the **factor under Section 35 Income Tax Act** for the calculation of a reduction of income tax in relation to trading income to **four times** the trade tax base, available for the 2020 period of assessment;
- Increase of the tax-exempt amount of **trade tax add-backs to EUR 200,000**;
- Introduction of a **degressive depreciation to the factor of 2.5** compared to the currently applicable depreciation up to a **maximum of 25%** per annum for movable fixed assets in the fiscal years 2020 and 2021;
- **Reduction of the VAT rate** from 19% to 16% and from 7% to 5% for a limited period from 1.7.2020 to 31.12.2020
- **Postponement of the due date for import VAT** to the 26th of the following month;
- A **bonus of €300** will be paid for each child entitled to **child benefits** (payable in two parts in September and October 2020);
- Limited to two years, the tax relief available to **single parents** will increase from €1,908 to **€4,008** for the years 2020 and 2021;
- With regard to the taxation of the private use of company cars, the **maximum amount for the gross list price** is increased from €40,000 to **€60,000**, where the vehicle has **no carbon dioxide emissions** per kilometre driven;
- **Increase in the assessment basis for the tax research allowance** under the Research Allowance Act to up to **€ 4 million** per company. The increase is effective from 1.1.2020 retroactively and is available until 31.12.2025.
- In order to avoid tax disadvantages due to corona-related reductions in investment, the deadlines for the use of **investment deductions** under **Section 7g ITA** (promotion of small and medium-sized businesses through investment deductions and special depreciation), which were originally to expire in 2020, are to be **extended by one year**.
- The reinvestment periods under **Section 6b ITA (rollover relief)** will also be temporarily **extended by one year**. In addition, the Federal Ministry of Finance will be authorized to grant a further extension of the deadline by means of a statutory instrument with the consent of the Bundesrat where this appears necessary due to the continuing effects of the COVID 19 pandemic.
- With regard to **limitation periods under Section 376 of the General Tax Code,** the time limit for

the **prosecution of offences** will be **extended to two and a half times** the legal period of limitation. Furthermore, Section 375a General Tax Code will be introduced for cases of tax evasion; under this new provision, a **confiscation of illegally obtained proceeds** can be imposed under Section 73 of Criminal Code, in cases where statute-barred **tax** claims have not yet been fulfilled. The new provision is intended to eliminate unequal treatment. In future, tax claims will be treated in the same way as civil claims in criminal confiscation proceedings.

See also **information on the stimulus package on the Federal Ministry of Finance website.**

Schlagwörter

Coronavirus (COVID-19), VAT rates, loss carry-back, stimulus package, trade tax addback