

COVID-19 - Further profits tax relief

THE CORONAVIRUS CRISIS CONTINUES TO PLACE A CONSIDERABLE BURDEN ON COMPANIES. THE TAX AUTHORITIES THEREFORE MAKE IT EASIER TO OFFSET LOSSES INCURRED IN 2020 AGAINST TAX PREPAYMENTS MADE FOR 2019.

Executive Summary

- The tax authorities are extending liquidity support for companies that will incur losses this year due to the coronavirus pandemic.
- They can apply for reimbursement of prepayments made for 2020 as well as for 2019.
- This will be based on a lump-sum calculation of 2020 losses carried back to 2019.
- All companies whose prepayments for 2020 have already been reduced to EUR 0 will be regarded “affected”.
- If the tax assessment for 2019 results in an additional taxes owed, this payment can be deferred, potentially without interest, until one month after notification of the tax assessment for 2020.

longer possible to change the prepayment assessment after the annual tax assessment has been issued; the annual tax assessment essentially settles and completes the prepayment assessment.

Taxpayers with profit income or rental income can now apply for the subsequent reduction of the prepayment for income or corporation tax for 2019 on the basis of a lump-sum loss carry-back for 2020.

In the opinion of the BMF, the current situation makes forecasting and reporting losses rather difficult, which is why the ministry is introducing a lump-sum procedure to make it easier for all parties involved. In individual cases, however, taxpayers will still be able to demonstrate a higher impending loss for 2020 than would result under the lump-sum procedure by submitting the relevant detailed documentation.

Introduction

In addition to receiving tax deferrals, companies were until now able to obtain reimbursement from the tax authorities for tax and VAT prepayments already made for 2020, if they were directly affected by the coronavirus crisis.¹ On 24 April 2020 the Federal Ministry of Finance (“**BMF**”) published a bulletin according to which prepayments for 2019, too, may be partially reimbursed in a lump-sum procedure.² However, taxpayers who have already received their tax assessment for 2019 can no longer make use of this option, as it is no

Who is eligible for using the carry-back?

The reduction of the prepayments for 2019 by means of the lump-sum loss carry-back is only possible after application by the taxpayer, which must be submitted in writing or via the ELSTER online platform to the respective tax office responsible for income or corporation tax.

To be eligible to apply for the lump-sum loss carry-back, taxpayers must be paying income tax or corporation tax and must generate profit income (income from agriculture and forestry, income from industrial or commercial activities or income from self-employment) or income from letting or leasing. Other types of income may be generated additionally without consequences.

¹ For further details, please refer to our GSK Updates <https://www.gsk.de/en/covid-19-legal-implications-coronavirus-crisis/>
² BMF bulletin from 24 April 2020, Coronavirus emergency measure: Application for lump-sum offsetting of prepayments already made for 2019.



In addition, the applicants must be directly and significantly negatively affected by the coronavirus crisis. However, if the taxpayer's prepayments for 2020 have already been reduced to EUR 0, the authorities will assume that that taxpayer fulfils this condition if he or she assures to be expecting not just an insignificant loss of income in 2020 due to the coronavirus crisis.

How high is the carry-back amount?

The lump-sum loss carry-back from 2020 amounts to 15 % of the relevant balance of the income types that make a taxpayer eligible to apply (income from profits and income from letting or leasing) that was used as the basis for the prepayment for 2019. The amount to be determined in this way is limited to EUR 1 million or EUR 2 million in the case of spouses filing jointly.

Reimbursement of 2019 prepayments

The loss carry-back will be deducted from the assessment basis that was used to determine the prepayments for 2019, resulting in a lower prepayment amount. Consequently, prepayments already made for 2019 will be too high and the tax offices will reimburse the difference between the previous payments and the new lower amount.



How is the carry-back applied exactly?

As the losses from 2020 can only be taken into account in the tax assessment for 2020, i.e. in a year from now, it is possible that the tax office will request an additional payment due to the now refunded prepayments in the context of the 2019 income tax assessment. This would deprive affected companies of urgently needed liquidity in the course of 2020 or 2021 when these payment are due. Therefore, the tax offices are to defer any additional payments resulting from the lump-sum loss carry-back without interest until one month after the tax assessment notice for 2020 has been issued, if the taxpayer at the time of filing the tax return for 2019 could still reasonably expect significant losses for 2020. These deferrals will be preliminary, being subject to revocation and to the reservation of the determination of interest at a later time.

If there are sufficient losses in 2020, the deferred additional payment set for 2019 will be waived due to the loss carry-back, as the tax offices will reduce the tax amount due.

If there are no or insufficient losses in 2020 after all, or if the taxpayer waives the right to carry back the loss, the (remaining) additional payment of the assessed tax will be due one month after the 2020 tax assessment notice is issued.

If the tax assessment for 2020 is based on an estimate because, for example, the taxpayer did not file a tax return for 2020, the tax authorities will subsequently charge deferral interest. Taxpayers should try to avoid this, if possible.



Conclusion:

As a contribution to easing the burden on taxpayers and the tax administration, the reduction of prepayments for 2019 in a quick lump-sum procedure in the context of a loss carry-back is very valuable. It allows companies to secure additional liquidity in a timely and uncomplicated manner.

The fact that the tax authorities also address the issue of additional payments owed resulting from the reimbursement of prepayments and, if necessary, defer them without interest until it is possible to offset the losses is certainly appreciated. Thus, the option of offsetting a lump-sum can be used without exposing oneself to the risk of having to pay back the reimbursed prepayment at the end of the year, if the crisis is still ongoing.

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