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NewsLetter

English

Value Solutions
Treuhand & Unternehmensberatung

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1. COVID-19 update

Help from the Federal government

The latest developments in the Federal government's package of measures to cushion the economic impact of the COVID-19 crisis are as follows:

- The compensation scheme for short-time working (for employees and those on an hourly wage) has been extended to mid-2021;
- Loss of earning compensation for employees and the self-employed limited to mid-2021 for the time being;
- Cases of hardship for companies were dealt with in the COVID-19 Act of September 25, 2020. Non-refundable payments can be made to companies affected by a case of hardship. A case of hardship is when annual revenue is below 60% of the multi-year average. This is also provided that the company in question was profitable or viable before the crisis, has not received other financial assistance from the Federal government already, and the canton concerned contributes half of the amount;
- Relief on payment of social security contributions (these remain due in full, only the terms of payment have been changed);
- In occupational pensions it has been decided that employers may also use employer contribution reserves to credit employee contributions to pension schemes;
- No arrears interest on VAT.

Accounting for COVID loans

COVID loans are treated as a (non-current) financial liability and reported either separately or along with other financial liabilities, with the interest under financial expenses. We also recommend disclosing the amount, interest rate and term of utilization in the notes to the financial statements.

If a COVID loan has been taken, the following restrictions must also be noted:

- The joint guarantee is restricted to five years
- Investment restrictions apply (only replacement investments are permitted)
- There is a ban on distributions (dividends, bonuses, and repayments of capital contributions)
- Intra-group loans are not permitted and loans granted may not be refinanced
- Own shares may not be purchased

OR 725 moratorium

Under the COVID-19 Ordinance the Federal Council provided for an OR 725 moratorium (a temporary waiver of the requirement under Article 725 of the Code of Obligations to disclose excess indebtedness, if the company did not yet have excess debt as of December 31, 2019). The OR 725 moratorium was not extended by the Federal Council. However, the extension of the provisional composition moratorium from four to a new maximum of eight months took effect ahead of schedule.

Please do not hesitate to contact us should you require any detailed explanations.

2. Working from home – tax treatment during COVID-19 (and afterwards?)

The costs of working from home count as production costs or professional costs. For tax purposes, professional costs are those costs required to engage in gainful employment. Based on case law from the Federal Supreme Court, costs associated with working from home are tax deductible, subject to the following conditions:

- The office in your own apartment or house must be used regularly.
- A substantial part of your professional work must be done at home.
- The employer must not provide any (or any suitable) place for working.
- A separate room must be available.

The special situation with COVID-19 is that generally a place for working is available at the employer, but this cannot be used due to the pandemic. Therefore, for COVID-19 the three other conditions have to be met (regular use, substantial part of the work, separate room to work in). The tax authorities are assuming that the arrangements for working from home due to COVID-19 are for a limited period only.

Compensation from the employer for working from home is part of salary, but expenditure counts as professional costs and is tax deductible. The question arises as to whether employer compensation for working from home might be regarded as expenses but the professional costs, on the other hand, not be deducted for tax purposes. The impact of the deductibility of compensation is likely limited due to the professional allowance. The amount deductible for working at home is generally calculated as follows:

- Single-family house: (imputed rental value/rental value x no. of rooms)/(no. of rooms +2)
- Apartment/condominium (imputed rental value/rental value x no. of rooms)/(no. of rooms +1)

Tax deductible costs of working from home include a portion of the rent, a portion of the ancillary costs and IT or other costs incurred by the employee. The tax deductibility of costs during the special measures to combat COVID-19 varies by canton:

- Some cantons, such as Aargau, Lucerne and St Gallen, allow deductions.
- Others, such as Zug and Zurich, continue to grant the professional allowance, travel and meal allowances as before.
- Some, such as Vaud and Graubünden, have not yet decided.

Companies need to be aware of the income tax issues over the place of work that can arise with working from home. Between cantons, there is no reason to assume that working from home due to COVID-19 will result in an employee's place of work being their place of residence. Internationally, more caution is the order of the day.

COVID-19 will likely change the world of working for good. It is highly likely that taxation practice in this regard will continue to develop and change. We recommend that companies plan their working from home arrangements carefully in future, to avoid unintended taxation in different cantons.

3. New stock corporation law 2021/2022

In June 2020 parliament passed a revision bringing stock corporation law up to date. This brings in a series of simplifications and greater flexibility for companies.

The first provisions of the new law take effect as of January 1, 2021:

- Stipulations on gender benchmarks

  This provision is intended to take account of the constitutional duty to ensure equal treatment. Large listed companies are now subject to a benchmark of 20% of women in senior management and 30% on the Board of Directors.

- Transparency rules in the commodity sector

  In the interests of greater transparency at companies engaged in commodity production, in future payments to government bodies in excess of CHF 100,000 must be disclosed and published electronically. The Federal Council reserves the right to extend this provision to commodity trading companies.

The other changes to stock corporation law require implementing provisions and are therefore expected to take effect at the start of 2022.

- The **capital range** is a new option for increasing/decreasing capital:

  up to 50% increases/decreases in capital are possible within a five-year period.

- There are simplifications for **capital decreases**:

  only one notification to creditors now has to be published (previously three), and the period in which creditors can demand security for their claim is now only 30 days.

- **Interim dividends** during the course of the year are now explicitly permitted.

- In future it will be sufficient to make the **annual report and audit report available electronically** in advance of the annual general meeting. **Electronic media** will be permitted at the **annual general meeting** making virtual AGMs possible, provided this is allowed in the articles of association. AGM resolutions can be passed by way of circulation and the AGM may also be held abroad.

- **Rights of minority shareholders are being strengthened**, with changes to various thresholds for enforcing rights to involvement and control.

- New, simplified **restructuring law** and stronger role for extra-judicial restructuring proceedings: the Board of Directors has to act sooner, but is granted more time if there are justified prospects for improvement.

Existing companies do not necessarily have to revise their articles of association to reflect these changes. They should, however, review whether and how they might benefit from the options now available and what steps this would require.

4. Earn-outs: a popular instrument when buying and selling firms

Recent months have seen an increasing number of corporate purchases where the price depends on the future success of the company – the traditional earn-out model is enjoying a boom. But there are several important points to note.

Earn-outs increase the credibility of financial planning

Particularly when times are uncertain, buyers are keen to have a price structure as closely linked to profitability as possible, to hedge against volatility. Sellers, however, see an increased risk of not achieving their desired selling price.

Moderate or negative growth rates at times of crisis are often a special situation in financial history. Sellers do not expect the profit in a crisis year to be taken into account to the same extent when determining the value of a company. So including a profit-related earn-out can bridge a gap between the parties and increase the credibility of financial planning in the eyes of the investor.

Increasing the value of a company despite a negative financial performance

Where an entrepreneur is sure of their financial planning, they can cushion the negative effect the crisis year has on the valuation. Ideally, if the earn-out is not capped at a maximum on the upside it is even possible to optimize the purchase price compared to a fixed price in times of crisis.

Our empirical figures show that a large part of defined earn-outs are actually achieved.

Going the whole hog – clearly defined mechanisms to guarantee success

Getting the timing right can determine the price, so the first question is always whether to delay the sale by a few months until the economic environment and planning are better aligned. A larger field of bidders (competition) can also provide a basis for negotiating to avoid or optimize an earn-out.

If the entrepreneur will continue to run the business after the sale, they can drive its performance. But integration or greater growth initiatives by the new investor may hurt future profits.

So clearly defined earn-out mechanisms to protect the seller are essential as a way of creating transparency and ensuring the entrepreneur can influence the relevant parameters.

The following points should be taken into account:

1. The prospects for cooperation between the parties must be founded on trust;
2. The earn-out should pay out based on KPIs that can be influenced by the seller and are easily definable (net revenue is less problematic than EBIT);
3. The earn-out should be linear with attractive scope on the upside, instead of having a hard floor. Pay attention to the time horizon;
4. It must be possible to clearly distinguish between the results relevant for the earn-out and new costs for integration or growth;
5. A deferral clause should be included in the event of unexpected business performance due to external events (e.g. the coronavirus crisis);
6. The residual purchase price should be secured.

Apart from the traditional earn-out model there are plenty of other variants to ensure a successful deal, such as:

- ➔ **Partial sale with put/call options**, with the put/call options on further or remaining holdings at a fixed future date to give a staggered exit.
- ➔ **Seller reinvests in the target company** after a full purchase, giving them the opportunity to participate in its success.
- ➔ **Varying the valuation multiple for future sales of holdings** in line with KPIs, to ensure a fair valuation in future.

Source: Transfer Partner, Düsseldorf / Valluga AG, Schweiz

In-house news

Congratulations

Stefan Koller has become Partner of the Value Solutions Group.

New Team Members

Daniela Hürlimann, Trust Administrator: Entry as of 01 August 2020

Adelina Berisha, Fiduciary with Swiss Examination: Entry as of 01 October 2020

Fabienne Anderegg, Expert in finance and accounting with Swiss Examination: Entry as of 01 October 2020


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Total range of services

Tax consultancy

We take a holistic approach to tax planning, assist you in your tax planning and represent your interests with the authorities.

- Advice on all tax matters relating to company formations, conversions, mergers, divisions, renovations, liquidations, registered address relocation and succession planning
- Fiscal advice for company acquisitions and sales, joint ventures and MBOs/MBIs
- Annual statement assistance for tax purposes, preparation of tax returns and representing your interests with the tax authorities

Trust services & management consulting

Let us handle all business, taxation and legal financial and business issues for you.

- Development of efficient accounting solutions and implementation on your premises or at our offices
- Timely monitoring of finances and situation-specific information
- Support with recurring tasks such as VAT returns, payroll administration and insurance issues
- Advice on all corporate finance matters such as M & A services, transactions, private placements, financing, etc.

Auditing

We advise and assist you in controlling and monitoring your company. We develop solutions to enable you to react to any changes in the economic and regulatory environment in time.

- Examination of financial statements, prepared in accordance with national or international accounting standards
- Examination of pension funds, public corporations or revisions in terms of the Money Laundering Act
- Audit of the internal control system and the acceptance of internal audit assignments

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