

Aid for shopping malls and sports centres 3/21/21



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Restrictions imposed to tackle the Covid-19 crisis have adversely affected many companies' ability to carry on the sort of business they were able to do before the emergency situation was announced. It is not only their ability to make a profit that is restricted but also their ability to cover business costs. State aid for shopping malls and sports centres is awaiting approval from the European Commission this week.¹ Both types of aid are to be granted and monitored by the Latvian Investment and Development Agency (LIAA). An aid application is due by 31 May 2021 (unless the deadline is extended) so it has to be ready in a week's time with a number of documents attached. LIAA will decide to grant aid by 30 September 2021 and check 15% of aid recipients on a random basis. This article explores key aspects of this aid.

Aid for shopping malls

This aid aims to enable shopping malls affected by the Covid-19 crisis to cover running costs they incur over the period from 1 December 2020 to 31 December 2021. Running costs are taken to mean utility charges (electricity, water, and heating), property rent, liability payments, including loan repayments, and external service costs. External service costs include accounting services, management services, and maintenance services for various systems such as ventilation, gas, and alarm.

The qualifying company has until 31 January 2022 to prepare a report on payments made out of the aid received and will have to refund any aid payment that is not used for the stated purpose.

The aid is EUR 15 per square metre of the total area stated on the cadastral survey file for the shopping mall's building, except car parks, but the total aid will not exceed 30% of the drop in revenue.

To qualify for the aid, shopping malls (with an appropriate NACE classification code) must meet these criteria:

- Set up for permanent and systematic trading;
- The total shopping area exceeds 7,000 m²;
- Separate trading venues accommodate at least five trading participants or service providers;
- Grocery stores do not occupy more than 30% of the total shopping area; and
- The total drop in rental revenue caused by the Covid-19 crisis is at least 30% when comparing total invoices and credit notes issued in one of the periods below:

Period

December 2020 and January, February and March 2021

January and February 2021

January, February, March and April 2021

Following the decision to grant business aid, it is illegal for the company to recalculate the invoices already issued and to issue any additional rental invoices to the tenants for December 2020 and January, February and March 2021.

Compared to

the corresponding months in 2019 and 2020 or in 2018 and 2019

November and December 2020

September, October, November and December 2020

The national budget funding available for this aid is EUR 20 million to be granted in the order of applications being filed.

Aid for sports centres

This aid will be granted to cover the running costs of a sports centre (with an appropriate NACE classification code) owned, managed or rented by a company, incurred over the period from 1 December 2020 to 31 December 2021.

The total drop in revenue the sports centre has suffered as a result of the Covid-19 crisis must be at least 60% when comparing the total revenue for December 2020 and January, February and March 2021 with the total revenue for the corresponding months in 2019 and 2020. A sports centre is taken to mean indoor sports premises such as fitness centres, sports clubs, sports halls, ice halls, public swimming pools and Olympic sports centres with a total indoor area of over 500 m².

The aid is EUR 25 per square metre of the total area stated on the cadastral survey file for the sports centre's indoor premises but the total aid will not exceed 60% of the drop in revenue.

The national budget funding available for this aid is EUR 8 million to be granted in the order of applications being filed.

Sports centres must refund the aid to the extent it remains unused for covering running costs they incur from 1 December 2020 to 31 December 2021. They will have to prepare a report on how the aid has been used and make a refund, if necessary, by 31 January 2022.

Eligibility restrictions

Rules issued by the Cabinet of Ministers impose aid restrictions on companies (groups) that have already received some aid, and the new aid will not be granted to a company with overdue taxes (duties) exceeding EUR 1,000 on the day of application. Credit institutions and financial institutions, legal entities registered in a tax haven, legal entities registered in Latvia in which more than 25% of shares are owned or held by a legal entity or association of persons registered in a tax haven, and companies considered to be in distress when the aid is granted do not qualify. Also, this aid will not be granted to a company that is subject to legal protection proceedings, insolvency proceedings, or any other restrictions when the aid is granted.

This aid is not available to shopping malls that have repeatedly broken the requirements of paragraph 24.7(6) of the Cabinet of Ministers' Rule No. 360 of 9 June 2020, *Epidemiological Safety Measures to Contain the Spread of Covid-19 Infection*. An annotation to this rule says that in order to check a tenant's conduct of business for compliance, the shopping mall has a right to call the police or the Consumer Protection Centre for detecting a breach of trading venue. Accordingly, this aid may be granted if the company has taken steps to prevent the breach of trading venue.

With certain exceptions the aid for sports centres is not intended for any state or municipal institutions, companies controlled by a public person, the free ports, or the special economic zones.

VAT on the aid received

Since this aid is granted to compensate shopping malls and sports centres for the drop in revenue, this raises the question of whether VAT is payable on the aid they receive.

The VAT Act provides that VAT is charged on the consideration for services supplied and their value should include the value of any state or municipal funding that is received to wholly or partly cover expenses incurred in producing goods or providing services and is directly linked to the price of those goods or services.

When it comes to charging VAT on grants, the Court of Justice of the European Union (“CJEU”) says that VAT should be charged only on grants that directly affect the price of a transaction. The CJEU rulings imply that charging VAT on grants could be justified if the customer benefits from the subsidy granted to the service provider, i.e. this is granted to enable the subsidised person to provide certain services at a certain price.

In our situation, however, where the aid is granted because of enforced idleness, this neither requires the recipients to supply any particular services nor directly regulates the price of their services, so the aid should be exempt from VAT.

¹ The Cabinet of Ministers’ Rule No. 229 of 8 April 2021, *Compensation of Companies Affected by the Covid-19 Crisis for the Drop in Rental Revenue*, with amendments of 29 April 2021, *Support for Shopping Centres Affected by the Covid-19 Crisis*, and the Cabinet of Ministers’ Rule No. 277 of 29 April 2021, *Support for Sports Centres Affected by the Covid-19 Crisis*