Monthly information

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Lösungen für deine Steuern

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Good day,

the December emergency aid was passed by the Federal Council on 14 November 2022 and came into force on 19 November 2022. The Annual Tax Act 2022 contains an addition to the taxation of other services. As was to be expected, a complicated regulation has to be used for this, which has led to three new paragraphs of the Income Tax Act.

The Federal Ministry of Finance has published a draft letter on practical questions regarding the zero tax rate for sales in connection with certain photovoltaic systems. The draft letter contains important delimitations and explanations for those affected and clarifies several points that had caused uncertainty in practice.

The Federal Fiscal Court (Bundesfinanzhof) had to rule on the input tax deduction from the only occasional purchase of so-called luxury vehicles of a management limited liability company with a different main activity.

In another ruling, the Federal Fiscal Court took the view that in the absence of comparative prices for other properties, a purchase price agreed for the property in question close to the time of the gift can also be decisive. An example case illustrates the considerable effects of the different valuation methods on the gift tax to be determined.

Do you have any questions about the articles in this issue of Monthly Information or about other topics? Please contact us.
We will be happy to advise you.

Emergency aid

Tax issues around December emergency aid

This emergency aid was passed by the Federal Council on 14 November 2022 and came into force on 19 November 2022. According to its abbreviation "EWSG", it concerns state measures against the considerably increased energy costs for end consumers for natural gas and district heating. It joins the energy price flat rate of a one-time 300 euros to reduce electricity price increases.

Private households as well as commercial and industrial consumers with an annual gas consumption of up to 1.5 million kWh are eligible for relief. The relief consisted of the state taking over the gas instalment payment for the month of December 2022. For district heating, a lump-sum payment was made as a subsidy, which was based on the budget billing payment for September 2022. These benefits borne by the State are taxable for certain beneficiaries. The Annual Tax Act 2022 contains a section specifically created for this purpose (XVI. Taxation of the gas/ Heat Price Brake) with four standards (§§ 123 - 126 EStG).

First of all, it is stipulated that this emergency aid only becomes taxable from the limits of tax liability for the solidarity surcharge. I.e. from a taxable income of 66,915 euros for single assessments and 133,830 euros for joint assessments of spouses. From a taxable income of 104,009 Euros and 208,018 Euros respectively, the entire emergency assistance is taxable. For the income between these respective amounts, the designation "**mitigation zone**" is introduced. For the income tax liability of the December assistance between these two amounts - i.e. in the mitigation zone - only the legal text can help as an explanation of the amount of tax liability:

"In the mitigation zone, only the fraction of the relief under section 123(1) that is the difference between the taxpayer's individual taxable income and the lower limit of the mitigation zone divided by the width of the mitigation zone is to be included as an attribution amount under section 123(2)."

It only remains to be noted that taxation is to take place in the year in which the utilities issue a statement of account for the amounts of emergency aid! As a rule, this should be the year 2023. By the time this tax return is submitted, the tax liability in the mitigation zone will certainly be able to be explained in more detail.

Income tax

Income from employee shareholdings: Income from capital assets or from employment?

If an employee holds a capital interest in his employer, the interest can be an independent basis of income, so that the related income and expenses are not connected to the employment relationship in a way that is significant for income tax purposes. This was the decision of the Baden-Württemberg Fiscal Court .

In this case, the employee uses his capital as an independent source of income independent of the employment relationship. The current income generated from this is then not income from employment, but income from capital assets.

Claim tutoring costs against tax in the case of learning difficulties

If a child's learning difficulty has been certified by the public health officer or the medical service of the health insurance, costs for tutoring can be deducted as extraordinary burdens if the costs caused by this exceed a certain limit. The amount of the burden limit depends on the parents' marital status and income.

However, it is a prerequisite that the certificate has been obtained before the tutoring sessions begin. The best-known learning disabilities include dyslexia, dyscalculia, attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD).

Not only can the costs for tutoring sessions with qualified tutors be deducted, but also, for example, costs for doctor's visits and medication, for psychotherapeutic treatment or for corresponding travel costs, if the health insurance does not cover them.

Ongoing practice for years of paying employee bonuses to employees without legal obligation - provision possible

A liability arising in the future had its economic cause in the past if the employee bonuses were mainly intended to compensate for the employees' performance in the past financial year (here: Bonuses as an additional remuneration instrument besides the fixed salary or other salary components). It follows that there is an inducement connection with the employees' work performance for the past financial year. This is not contradicted by the fact that employee bonuses also serve the purpose of binding employees to the company for the future, if this is merely a secondary

purpose which at least does not override the main purpose (compensation for work performed in the past financial year). According to the Münster Fiscal Court.

When setting up provisions, value-impairing circumstances that became known at the latest by the time the balance sheet would have had to be prepared in the ordinary course of business may be taken into account. Insofar as the criteria taken into account when determining employee bonuses (growth dynamics, order backlog, earnings development, financial situation) are based on the balance sheet and the annual report of a financial year, these are circumstances that already existed on the respective balance sheet date but only became known in the period between the balance sheet date and the preparation of the balance sheet.

Value added tax

BMF draft letter on the zero tax rate of certain photovoltaic systems

The Federal Ministry of Finance (BMF) intends to answer the first practical questions as soon as possible and has published a first draft letter on the zero tax rate for certain photovoltaic systems.

The letter clarifies several points that had caused uncertainty in practice. The draft now ensures that the sale or even the free transfer of a PV system by an entrepreneur (who is not a small entrepreneur) to a purchaser will constitute a non-taxable sale of a business as a whole. If the acquirer wishes to make use of the small business regulation, he must consequently keep an eye on the regulations on input tax adjustment.

In the past, many operators of PV systems waived the VAT small business regulation because it was more economical for them to claim the input tax deduction at the time of purchase. Consequently, they had to subject privately consumed electricity to value added taxation. The deducted input tax was thus offset downstream. This will not change after 31 December 2022.

Entrepreneurs who purchase a PV system from 2023 onwards, however, will not be able to deduct any input tax due to the zero tax rate. The BMF draft letter clarifies that therefore no compensation of an input tax deduction is required and consequently, in contrast to the current situation, no tax is to be paid on the gratuitous transfer of value in the case of private electricity consumption. New system operators thus generate an economic advantage.

Taking old assets out of the company's assets and using them in private assets should become more attractive. Although the withdrawal of an old investment is taxable, it is to be taxed (only) at the zero tax rate under the other conditions. At this point, the draft letter provides for a serious restriction. Withdrawal is only to be possible if at least 90 % of the electricity generated is used for non-business purposes.

Note

In the view of the German Tax Advisors Association, there is no legal basis for this! It therefore calls for the 90 % limit to be waived.

Input tax deduction from only occasional purchase of luxury vehicles

The dispute before the Federal Fiscal Court was whether a business framework or an economic activity could be derived solely from the subjective circumstance that the vehicles were acquired as an investment with the aim of subsequent sale and therefore with the intention of generating income, or whether objective criteria must be fulfilled.

The Federal Fiscal Court was of the opinion that the input tax deduction from the only occasional purchase of a passenger car was only due to an entrepreneur with a different main activity if an economic activity was thereby established or the economic activity of the entrepreneur was not affected.

The entrepreneur's main business activity is directly, permanently and necessarily expanded.

Inheritance / gift tax

Methods of valuation of a property for the purposes of gift tax

If you want to give your son or daughter a special gift for a special occasion, you give him or her a small house for the new phase of life. This is what a father did in the following example case, but he was so sensible that he left the choice of the property with building, carport and garden to the daughter and only (!) paid for the property acquired by the daughter with a notarial deed. In addition to the purchase price of 900,000 euros, he also paid the land acquisition tax and the notary and land registry costs. After the wedding ceremony, the responsible tax office approached the father and demanded a gift tax declaration - he

had also assumed this tax in the gift contract with the daughter.

The father determined the value of the property in accordance with the valuation method described in the Valuation Act (Sachwertverfahren) at approximately 520,000 euros. He did not take into account the comparative value method, which has priority for single-family houses, because the expert committee for land had informed him that no comparative value was available for the location of the property. The value for gift tax purposes, including the assumed land transfer tax of 6.5 % and the notary and land registry costs, thus amounted to 593,000 euros. To this was added the gift tax itself, which the father had assumed. In its gift tax assessment, however, the tax office did not follow the calculated value, but took the purchase price as a basis, because this was available as a comparison price. Since the father did not want to follow this argumentation, the case came before the tax court and finally the Federal Fiscal Court.

In its ruling, the Federal Fiscal Court took the view that in the absence of comparable prices for other properties, a purchase price agreed for the property in question close to the time of the donation can also be decisive. This purchase price was available here. By applying the comparative value, the gift tax thus amounted to 125,200 euros instead of a tax of 23,562 euros in the valuation according to the asset value method. The different amounts result as follows:

Invoice material **value**

593,000 Euros (initial value) - 400,000 Euros (tax-free amount) = 193,000 Euros + 21,230 Euros (11% tax taken over) = 214,230 Euros (taxable value) of which 23,562 Euros (11% tax)

Invoice Comparative value

973,000 Euros (comparative value) - 400,000 Euros (allowance) = 573,000 Euros + 85,950 Euros (15 % assumed tax) = 658,950 Euros (taxable value) of which 125,200 Euros (15 % tax)

This example shows the pitfalls that lurk in such transactions and the considerable impact that the different valuation methods have on the tax to be assessed.

Trade tax

Maintenance costs for leasing contracts to be added for trade tax purposes

The term "leasing instalments" in the Trade Tax Act is to be understood in economic terms - just as in the case of rent and leasehold interest. Maintenance costs that are contractually passed on to the lessee are part of the "leasing rate" and must be added for trade tax purposes.

The Federal Fiscal Court (Bundesfinanzhof) has stated in a ruling that leasing instalments have been expressly included in the addition when determining trade income under the Business Tax Reform Act 2008. They are to be added if the asset for which the leasing instalments are paid is owned by a third party. In these cases, leasing is comparable to renting. The contractual passing on of ancillary costs from the landlord/lessor to the lessee/lessee typically has the effect of reducing the "pure" rent or lease payment, as does the passing on of maintenance costs to the lessee with regard to the amount of the leasing instalment. In economic terms, the special payments for the maintenance work are nothing other than parts of the remuneration that the lessee has to pay for the transfer of use, including use and the wear and tear associated with use. It would not be compatible with uniformity of taxation if the remuneration to be paid for maintenance were treated differently depending on whether it was included in the leasing instalment or paid separately.

Real estate transfer tax

Real estate transfer tax in the case of the sale of real estate subject to usufruct reservation

If the purchaser of real property leaves the seller (or a third party) rights of use to the real property (usufructuary and residential rights) without appropriate compensation, this is a benefit in kind which the purchaser gives up for the acquisition of the property and which must therefore be included in the basis of assessment for real property transfer tax. This was the decision of the Baden-Württemberg Fiscal Court.

If, however, the seller of the real estate appropriately remunerates the reserved uses, the transfer of use does not constitute consideration for the real estate within the meaning of the Real Estate Transfer Tax Act. Whether the seller has reserved the right to use the land without reasonable compensation must be determined by interpreting the purchase contract.

Procedural law

Substitute delivery by deposit in case of impossibility to file a tax assessment notice

According to the Düsseldorf Fiscal Court, the impossibility of depositing a tax assessment notice in the letterbox or a similar device set up for receiving mail is a prerequisite for its effectiveness for substitute delivery by depositing it at the post office.

Therefore, if the notice of deposition is deposited in the letterbox, there are serious doubts as to the effectiveness of the substitute service. This is because, as can be seen from the present postal delivery certificate, in the case in dispute the deliverer put the notification of the deposition in the letterbox of the applicant's authorised recipient. From a factual point of view, there is nothing to show that the notices themselves could not have been deposited in this letterbox into which the notice was deposited.

Effective dismissal of a GmbH managing director - No liability for wage tax debts

Upon dismissal as managing director, the managing director's activity shall be terminated. This applies irrespective of the time at which the termination is entered in the commercial register. However, the entry has only declaratory effect, i.e. the beginning and the end of the position as managing director under company law - and thus also the coming into existence and the expiry of the position as managing director under tax law in the case of GmbH managing directors - depend solely on the content and the effectiveness of the shareholders' resolution. The public faith of the commercial register has no influence on liability under § 69 AO.

Although in the case before the Düsseldorf Fiscal Court there was no written shareholders' resolution in which the dismissal was expressly expressed, there was no general requirement for shareholders' resolutions to be specific, and certainly no requirement for them to be express, so that implied resolutions were also possible. Taking into account the aforementioned principles, the plaintiff's position as managing director was terminated at the time in question.

Civil law

Declaration of rent increase due to modernisation measures - itemised list of all costs not necessary

A landlady had justified the increase in rent with the installation of a new central heating system and thermal insulation. She handed over a tabular list of the measures and their total and repair costs to the tenant. The plaintiff refused to pay the requested rent increase for formal reasons.

However, the Federal Court of Justice considered it sufficient for landlords to state the total costs of a modernisation measure and the deducted costs for maintenance measures saved as a result in the declaration of increase. The detailed list of items and trades was not necessary here.

Dates Taxes/Social Security March/April 2023

Tax type		Maturity	
Wage tax, church tax, solidarity surcharge		10.03.2023[1]	11.04.2023[2]
Income tax, church tax, Solidarity surcharge		10.03.2023	not applicable
Corporation tax, solidarity surcharge		10.03.2023	not applicable
Value added tax		10.03.2023[3]	11.04.2023[4]
End of the grace period for the above tax types upon payment by:	Bank transfer[5]	13.03.2023	14.04.2023
	Cheque[6]	10.03.2023	11.04.2023
Social security[7]		29.03.2023	26.04.2023
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge thereon must be paid to the competent tax office at the same time as a profit distribution is made to the shareholder.	

1 For the past month.

2 For the past month, for quarterly payers for the past calendar quarter.

3 For the past month, in the case of a permanent extension for the penultimate month.

4 For the past month, in the case of a permanent extension for the penultimate month, for quarterly payers (without permanent extension) for the past calendar quarter.

5 As a rule, advance VAT returns and wage tax returns must be submitted (electronically) by the 10th of the month following the filing period. If the 10th falls on a Saturday, Sunday or public holiday, the next working day is the deadline. No late payment surcharges will be levied for late payments of up to three days. A transfer must be made in good time so that the value date on the tax office's account is the same as the due date.

6 If payment is made by cheque, please note that payment is not deemed to have been made until three days after the cheque has been received by the tax office. A direct debit mandate should be issued instead.

7 Social security contributions are uniformly due on the third last bank working day of the current month. In order to avoid surcharges for late payment, the direct debit procedure is recommended. All health insurance funds have a uniform deadline for the submission of contribution statements. These must be received by the respective collection agency no later than two working days before the due date (i.e. 27.03.2023/24.04.2023, 0:00 hrs in each case). Regional peculiarities regarding the due dates must be observed if necessary. If payroll accounting is carried out by external agents, the wage and salary data should be transmitted to the agent about ten days before the due date. This applies in particular if the due date falls on a Monday or on a day after a public holiday.