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Hello,

Capital gains realized by a taxpayer within one year from the sale or exchange of cryptocurrencies such as Bitcoin, Ethereum and Monero are subject to taxation as a private sale transaction, according to a ruling by the Federal Fiscal Court.

According to another ruling of the Federal Fiscal Court, the reimbursement by the employer of telephone costs for a cell phone contract concluded by the employee is also tax-free if the employer has acquired the cell phone, through the use of which the telephone costs were incurred, from the employee at a low price, even below the market value, and immediately thereafter relinquishes the cell phone to the employee for private use.

In addition, the Federal Fiscal Court ruled that a spouse who is economically independent can claim input tax from the purchase of a car that he or she rents to his or her spouse who works as a freelancer.

Since 01.01.2023, the supply and installation of certain photovoltaic systems are subject to a new zero tax rate. The Federal Ministry of Finance published the final letter on the zero tax rate for sales in connection with certain photovoltaic systems on 27.02.2023.

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.

Income tax

Cryptocurrencies: Capital gains are taxable

The plaintiff had acquired, exchanged and resold various cryptocurrencies. Specifically, these were transactions with Bitcoins, Ethereum and Monero, which the taxpayer carried out privately. He generated a total profit of 3.4 million euros from them. A dispute arose with the tax office as to whether the profit from the sale and exchange of cryptocurrencies was subject to income tax. The action brought by the taxpayer before the tax court was largely unsuccessful.

The Federal Fiscal Court (Bundesfinanzhof) has affirmed the tax liability of capital gains from Bitcoin, Ethereum and Monero. Cryptocurrencies are assets that are subject to taxation as a private sale transaction if they are acquired and sold within one year. Virtual currencies (currency tokens, payment tokens) represent a "different economic good". From an economic point of view, virtual currencies are to be regarded as means of payment. They would be traded on trading platforms and exchanges, would have a market value and could be used for payment transactions to be settled directly between participants. If the tokens are acquired and sold or exchanged within one year, any resulting gains or losses would be subject to taxation.

Note

With its ruling, the Federal Fiscal Court confirms the view of the tax authorities.

The results of a representative survey by the digital association Bitkom show that around a third of respondents (32%) can imagine buying cryptocurrencies in the future. In this context 3 % have already bought them in the past, 6 % are planning to do so and 23 % definitely do not want to rule it out. Thus, this topic is of great relevance.

Deduction of extraordinary burdens from the total amount of income

In income tax law, there is the concept of "extraordinary burden", for which §§ 33, 33a and 33b EStG contain rules on deduction from income. There are three different areas of deduction that can be considered in this context:

1. Extraordinary expenses arising from the maintenance/vocational training of a legally dependent

person (usually children or parents)

2. Lump sums for costs incurred by disabled persons and surviving dependents (§ 33b EStG)
3. Major expenses necessarily incurred by the taxpayer or jointly assessed partner (Section 33 (1) to (3) EStG)

The requirements and the amount of deductions for groups 1. and 2. result from fixed lump sums and proof requirements, therefore the 3rd group shall be considered in more detail. Here, costs are meant that can be incurred by any taxpayer. The largest share is probably taken by illness-related expenses, unless they are covered by health insurance or, in the case of civil servants, by the state employer's allowance. Another group of expenses are replacements that have become necessary as a result of natural events, such as fire, floods, etc. for necessary material items. These items may be: clothing, household goods, furnishings of a normal dwelling.

The replacement purchases must be necessary and reasonable in terms of the amount and may be eligible for the taxpayer, his/her partner(s) and children living in the household. For this, however, the taxpayer must credibly demonstrate that he/she did not cause the damage and that there are no claims for compensation. If the usual insurance options were not taken advantage of, there is no tax-deductible burden. However, the costs of a funeral within reasonable limits for close relatives who have not left any assets also fall under 3.

All burdens of this 3rd group are to be added up per calendar year. The "reasonable personal burden" is deducted from this sum. This is based on the amount of income and the number of children and amounts to between 1% and 7% of the total amount of income, i.e. before deduction of special expenses and other allowances. Over the years, tax case law has dealt with a number of costs and assessed them in terms of deduction. The following cases are examples:

- Disability-related additional costs for the conversion or construction of a house/apartment: deductible, this may also include furniture purchases necessitated by a disability or the purchase of disability-friendly tableware.
- Stair lift: costs may be deductible if medical necessity is confirmed by the competent medical officer.

- Dowry for the daughter: Costs incurred by the parents for this purpose on the occasion of the marriage are regularly not (or no longer) to be regarded as compulsory.
- Dietary meals: No extraordinary burden!
- Spa expenses: Deductible if proven necessary to cure or alleviate an illness and the costs are not reimbursed by a health insurance company.
- Extortion money: No extraordinary burden if the reason for extortion itself was created without coercion. However, deduction may be given in case of coerciveness.
- Capital settlement of maintenance claims: Deduction is generally ruled out because not necessarily incurred.

Employee benefits from the use of a company cell phone tax-free

The Federal Fiscal Court (Bundesfinanzhof) had to decide whether a legal abuse of the arrangement is always to be assumed if the employee sells his cell phone to his employer for a purchase price of 1 euro and the employer subsequently makes the cell phone available to the employee again for private use as part of a contract and assumes the costs incurred for the private cell phone contract.

Sham transactions and sham acts are irrelevant for taxation purposes. Declarations of intent requiring receipt which are made only as a sham with the consent of the recipient of the declaration are void under the German Civil Code. A sham transaction exists if the parties to the contract agree on the sham nature of the legal transaction and what has been agreed upon is not intended to have any validity according to the unanimous will of the contracting parties. Consequently, there is **no sham transaction** if the legal result sought by the contracting parties presupposes the validity of the legal transaction. This was also the case in the dispute.

Partition of real estate: taxation of a garden plot as a private sale transaction

The sale of a garden plot is not exempt from taxation as a private sale transaction if the property continues to be used for residential purposes. This was the decision of the Lower Saxony Tax Court.

The plaintiffs had realized a private sale transaction by reselling the partial area of the land they had previously acquired within ten years of acquisition. This

sale transaction is not exempt from taxation because it is used for the plaintiffs' own residential purposes.

The case law does include the "associated land" in the case of a building used for own residential purposes, as the sale of an asset used for own residential purposes regularly also includes the proportionate land. However, the Federal Fiscal Court draws the line in consideration of the normative purpose of the exemption. Thus, in a case in which the taxpayer sells the neighboring property previously used as a garden while remaining resident on the other property, the purpose of the tax concession, namely not to make a move more difficult, in particular as a result of a change of job, is not fulfilled and the sale is taxable. In this respect, there is no uniform connection of use and function between the dwelling and the land in accordance with the values of the Income Tax Act.

Note

In this context, a recent ruling by the Münster Fiscal Court should be noted. In this ruling, the court states that a mixed-use property is to be regarded as an independent asset for tax purposes, even if it forms a unit with the land and the building under civil law.

Taxation of a doctoral scholarship

Benefits from a doctoral scholarship may be subject to income tax. According to a decision of the German Federal Fiscal Court, this is the case at any rate if the scholarship holder has to provide an economic consideration and no tax exemption provision applies.

Sales tax

Value added tax in case of free supply of heat from biogas plant

The Federal Fiscal Court had to clarify whether the assessment basis for the levy of heat from a biogas plant is to be determined according to the market value method or whether the cost price is to be apportioned in the ratio of the quantities of electrical and thermal energies produced in the uniform measurement quantity kWh (so-called energetic apportionment method).

If prime costs are incurred for deliveries against payment as well as for free transfers of value, these are to be allocated according to actual or, if applicable, fictitious sales (market values). The proper estimation

to be made is generally the responsibility of the entrepreneur, who must decide which estimation method he chooses, whereby the tax authorities and thus also the tax court can verify whether the estimation is proper.

Car leasing to spouses: input tax deduction and private use in the so-called preliminary model

The Federal Fiscal Court ruled that a spouse who is economically independent can claim input tax from the purchase of a car that he or she rents to his or her spouse who works as a freelancer.

The input tax deduction of the lessor of a passenger car is not contrary to the system and therefore not abusive. In the case of a rental between spouses, this applies in any case to the rental of passenger cars that do not serve the immediate family needs. A contractually agreed full rental to the other spouse does not prevent the private use of the rented car by the lessor spouse from being taxed. However, if the leasing spouse uses the car himself/herself, he/she must subject a gratuitous transfer of value to VAT.

Reduced sales tax in restaurants to remain

The consumption of food in restaurants is to be permanently taxed at the reduced VAT rate of 7%. This is the aim of the draft bill to amend the Value Added Tax Act introduced by the CDU/CSU parliamentary group on March 2, 2023. The reduction in the VAT rate for restaurant and catering services, with the exception of the supply of beverages, from 19% to the reduced rate of 7% had been introduced on 01.07.2020 against the backdrop of the Corona pandemic and extended several times, most recently until the end of 2023.

Final BMF letter on zero tax rate for photovoltaic systems

Since 01.01.2023, the supply and installation of certain PV systems is subject to a new zero tax rate. The German Federal Ministry of Finance (BMF) published the final letter on the zero tax rate for sales in connection with certain photovoltaic systems on 27 February 2023.

In practice, questions have increased since the introduction of the zero tax rate by the Annual Tax Act 2022. For example, with regard to the taxation of ancillary services. The letter now specifies, among other things, typical ancillary services that share the

fate of their main service, specifically the supply of the PV system.

Compared to the draft version, some useful examples have been added: For example, the transfer of the registration to the market master data register, the provision of software for controlling and monitoring the system, the connection of a bidirectional meter, the provision of scaffolding, the supply of mounting materials or, under certain circumstances, the replacement of the meter cabinet.

The draft of the BMF letter already provided for simplifying assumptions when examining individual facts, e.g. with regard to the specific solar modules and storage units that may be subject to the zero tax rate. These have been revised and supplemented in the final BMF letter.

While the draft simplified the assumption that solar modules with an output of "500 watts and more" are used for grid-connected or stationary stand-alone systems, the BMF has lowered this value to "300 watts and more" in the final version. Furthermore, the BMF has specified further verification simplifications for PV systems with an output of no more than 600 watts, for example.

The planned restriction of the withdrawal of old assets from business assets was criticized - among others also by the German Tax Consultants Association. Although the final letter also adheres in principle to the 90% limit, the requirement is somewhat mitigated. In cases where part of the electricity generated is stored in a battery, for example, it must be assumed that the operator uses more than 90% of the electricity generated by the plant for non-business purposes. This would then allow the withdrawal (at zero tax rate).

Other

Students can apply for the energy price allowance

Since 15.03.2023 students as well as specialized pupils can request the energy price lump sum. According to the federal government, the 200-euro one-time payment can be applied for via a specially developed online platform (www.einmalzahlungen200.de). The access data sent by the educational institution and a BundID account are required for this.



Germany risks its attractiveness as a tax location

The latest Mannheim Tax Index published by ZEW Mannheim shows that Germany has lost further ground in international tax competition. This is particularly evident from the reduction in the French corporate tax rate in recent years: The corporate tax burden in Germany is now highest in direct comparison with major competitors. The effective average tax burden on a profitable investment project in Germany in 2022 is 28.8%, exceeding the EU average by 10 percentage points.

Energetic building and renovation

Energy supply to buildings accounts for around 30% of CO2 emissions. This means that there is relatively large energy-saving potential in buildings. Not least because of the workshop report "Renewing prosperity in a climate-neutral way" by the German Federal Ministry of Economics and Climate Protection, the replacement of gas and oil heating systems is also being promoted. From 2024, at least 65% of newly installed heating systems are to be powered by renewable energies. In view of these climate policy goals, it is all the more important to keep track of possible tax reductions and their requirements, as well as federal subsidies for efficient buildings.

In order to achieve the climate targets with the Climate Protection Program 2030, the federal government has decided to further develop the existing subsidy for new construction. To this end, the Federal Ministry of Housing, Urban Development and Construction issued the Guideline for Federal Funding for Efficient Buildings - Climate-Friendly New Construction. The aim of the subsidy is to reduce environmental impacts and raise sustainability standards in the creation of new housing or non-residential buildings.

Civil law

Rental collateral invested in shares - tenant has claim to surrender of shares

When concluding a rental agreement for an apartment in Cologne in 1960, the parties to the agreement agreed that the tenant would pay a rental security deposit of DM 800, which in turn was to be invested in shares and was indeed invested. After the tenant's death, her daughter as sole heir terminated the lease in 2018 and demanded the return of the shares. The landlady did not consider such a claim to exist. She was only prepared to pay out the security deposit in the amount of 409.03 euros. The heiress finally filed a lawsuit.

The Cologne Local Court ruled in favor of the heiress. She is entitled to the return of the shares. She does not have to be satisfied with the repayment of the originally provided security deposit. The tenant is entitled to income from the rental collateral - regardless of the form of investment (Section 551 (3) sentence 3 BGB). In the case of an investment in shares, the income includes not only the dividends but also any price gains. Agreements deviating from this are invalid. The fact that, as a result of changed circumstances, the capital procurement at the time is no longer so favorable for the landlord from today's perspective is its own risk.

Dates Taxes/Social Security

April/May 2023

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		11.04.2023 ¹	10.05.2023 ²
Sales tax		11.04.2023 ³	10.05.2023 ⁴
End of grace period of above tax types when paid by:	Bank transfer ⁵	14.04.2023	15.05.2023
	Check ⁶	11.04.2023	10.05.2023
Trade tax		not applicable	15.05.2023
Property tax		not applicable	15.05.2023
End of grace period of above tax types when paid by:	Bank transfer ⁵	not applicable	19.05.2023
	Check ⁶	not applicable	15.05.2023
Social security ⁷		26.04.2023	26.05.2023
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge on it must be paid to the responsible tax office at the same time as a profit distribution is made to the shareholder.	

- 1 For the past month, for quarterly payers for the past calendar quarter.
- 2 For the past month.
- 3 For the past month, in the case of a permanent extension for the month before last, for quarterly payers without a permanent extension for the past calendar quarter.
- 4 For the past month, for the penultimate month in the case of a permanent extension, for the past calendar quarter in the case of quarterly payers with a permanent extension.
- 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 fees will be charged if payment is up to three days late. A remittance must be made early enough so that the value date on the tax office's account is the same as the due date.
- 6 If payment is made by check, it should be noted that payment is not considered made until three days after the check is received by the tax office. A direct debit authorization 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 late payment penalties, 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. on 24.04.2023/24.05.2023, in each case at midnight). Regional peculiarities with regard to the due dates may have to be taken into account. If payroll accounting is performed by external agents, the payroll data should be transmitted to the agent approximately 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.

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