Monthly information

August 2023

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solutions for your tax

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Good day,

the Münster Fiscal Court ruled that the Corona aid paid in 2020 does not constitute extraordinary income that is only taxable at a reduced rate for income tax purposes.

In 2022, 22 million people in Germany received benefits of around 363 billion euros from statutory, private or company pensions. As reported by the Federal Statistical Office, around two-thirds (66.4%) of pension benefits were taxable income.

In another ruling, the Münster Tax Court commented on whether a valuation report obtained by the taxpayer in which the remaining useful life of a rental property is calculated in accordance with the Real Estate Value Ordinance can be used as the basis for determining depreciation.

The German Federal Fiscal Court (Bundesfinanzhof) dealt with questions regarding so-called ship investments and clarified whether the default of a shareholder loan or the claim from a typical silent partnership in the context of the discontinuation of the operation of the co-partnership is covered by the settlement effect.

There is no employer incentive if a temporary employee is provided with a canteen meal free of charge by the hirer as part of a communal catering arrangement and the hirer does not settle with the lender for the meal provision. This was the decision of the Lower Saxony Tax Court.

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.

For income taxpayers

Corona aid received is not subject to reduced income taxation as extraordinary income

A sole proprietor ran a commercial enterprise that included a restaurant and a hotel. In 2020, he was granted emergency aid of 15,000 euros, bridging aid I of 6,806 euros and "November/December aid" of 42,448 euros due to the pandemic-related restrictions. The defendant tax office subjected the Corona aid received to the standard income tax. The sole proprietor claimed, among other things, that the Corona assistance was taxable at a reduced rate. They were compensation for lost or foregone income or for the non-performance of activity due to the closure of the business operations due to the pandemic.

The Münster Fiscal Court dismissed the action because, in its opinion, the question of whether the grants constituted compensation for lost or foregone income or compensation for the abandonment or non-exercise of an activity was not relevant in this context. It was not a question of extraordinary income. In the year in dispute, the plaintiff only recognized Corona aid as income, which had also been related to that calendar year. Neither was the Corona assistance intended to extend to further assessment periods, nor was it received in an assessment period other than the one for which it was paid, and in this assessment period it coincided with regular other income of the plaintiff from his business operations.

Note

The decision is final. The appeal was not allowed, as the principles regarding the element of aggregation have been clarified by case law.

Two-thirds of pension benefits subject to income tax in 2022

In 2022, 22 million people in Germany received benefits of around 363 billion euros from statutory, private or company pensions. As reported by the Federal Statistical Office, around two-thirds (66.4%) of pension benefits were taxable income. Since 2015, the average taxation rate has thus risen by 11 percentage points. The reason for the increase is the new regulation of the taxation of retirement income in the "Retirement Income Act" of 2005. The core element of the new regulation is the transition from upstream to downstream taxation of statutory pensions by the year 2040. According to this, the expenses for retirement provision in the savings phase will gradually be tax-exempt and only the benefits in the payout phase will be taxed. The proportion of pension income that is taxable depends on the year in which the pension starts: the later the pension starts, the higher the taxed proportion of pension income. In addition, the taxable portion also increases due to pension increases, as these are fully taxable.

For many pensioners, the taxable portion of their pensions is below the basic allowance after relevant deductions. In this case, many pensions remain tax-free if there is no other income. Almost 84% of taxed pension recipients - including surviving spouses and children - have other income in addition to their pensions, such as pension payments, employment income or rental income. In the case of married couples assessed jointly, this can also be the income of the partner, which is added together for taxation purposes.

Determination of depreciation based on value appraisals with calculation of the remaining useful life of a rental property in accordance with the German Real Estate Value Ordinance (Immobilienwertverordnung)

The Münster Fiscal Court has ruled that it is up to the taxpayer to demonstrate and, if necessary, prove a **shorter actual useful life for real estate in** individual cases. The assessment of the circumstances presented by plaintiffs in this respect is then incumbent on the fiscal court as the instance of fact in the action.

Against this background, the submission of an expert opinion on the building substance, in particular the determination of the condition of real estate with the help of the so-called ERAB method (method for determining the wear and tear of building materials), is not a prerequisite on the part of the taxpayer for the recognition of a shortened actual useful life. Therefore, if the taxpayer or an expert commissioned by the taxpayer chooses a different method of proof for comprehensible reasons, this can be the basis for the estimate of a shortened actual useful life required in the individual case, insofar as conclusions can be drawn from the chosen method regarding the determinants to be determined. Since only the highest possible probability of a shorter actual useful life can be required in the context of the estimate, a narrowing of the expert opinion methodology or a specification of a particular determination method would overstretch the requirements for the burden of proof.

The **procedure for determining the real value of buildings can** also be applied. Even if the applicable

model for deriving the remaining economically useful life for residential buildings, taking into account modernizations, is not primarily aimed at determining the actual useful life, such a model can be suitable for forming a reliable conviction about the basis for estimation to be applied in the individual case. There is no justification for deviating from the (building law) principle of equivalence of valuation methods for tax law reasons.

Ship participation: Deductibility of the loss of silent participation when determining profits according to tonnage

It appeared questionable before the Federal Fiscal Court whether limited partners of a shipping company participating as silent partners at the same time and calculating their profit on the basis of tonnage can deduct the (partial) loss of their silent contribution as a special operating expense in the course of the liquidation of the company, or whether it is a component of the surrender profit compensated with the tonnage profit.

According to the BFH, if the limited partners of a KG (limited partnership), who at the same time hold a typical silent partnership interest in this company or had granted loans to this company, were to partially default on their silent partnership contributions or loan claims in the context of the discontinuation of the operation of the partnership, the resulting loss would be part of the income and would be compensated with the determined profit.

Employer inducement in the case of free canteen meals for temporary employees

In the opinion of the Lower Saxony Fiscal Court, there is no employer incentive if a temporary employee is provided with a canteen meal free of charge by the hirer as part of a communal catering arrangement and the hirer does not settle with the lender for the provision of the meal.

The employer is liable for the wage tax that he must withhold and pay from the wages for the account of the employee each time the wages are paid. Liability exists, among other things, if wages were treated as tax-exempt without the conditions for tax exemption being met. Here, the plaintiff was not obliged to withhold wage tax for the allowances for additional meal expenses paid to its employees for offshore assignments and to remit them to the defendant. The allowances for additional meal expenses paid by the plaintiff to its employees are tax-exempt. Allowances received by employees outside the public sector from their employer for the reimbursement of travel expenses, relocation expenses or additional expenses in the event of double housekeeping are tax-free insofar as they do not exceed the expenses deductible as income-related expenses. Travel expenses also include additional meal expenses.

Expenses for "Meals on wheels" are not extraordinary expenses

The Münster Fiscal Court commented on the treatment of expenses for "meals on wheels" as extraordinary expenses.

It may be true that the plaintiff and his wife, who has died in the meantime, were dependent on the disputed lunch deliveries due to illness. In general, however, expenses are not extraordinary and unavoidable if they are not incurred directly for the purpose of healing but are occasionally incurred as consequential costs of an illness. The basic consideration of such indirect costs of an illness would lead to an unjustifiable tax consideration of **costs of living, which would not** be compatible with the meaning and purpose of the Income Tax Act. A **strict standard** must be applied when assessing whether living expenses can be considered for tax purposes by way of exception.

For one thing, the use of meal delivery services is now widespread throughout the population. Against this background alone, these costs are also to be allocated to general living and are not deductible. On the other hand, the preparation of meals as an everyday activity is covered by the lump sum for the disabled.

For inheritance taxpayers

After the death of the testator extensive renovation of the family home - Intended for own residential purposes?

The parties are disputing the granting of tax relief for the semi-detached house occupied by the decedent himself until his death. The plaintiff is the sole heir of his father, who died in 2013. The estate included the semi-detached house, which was occupied by the father alone until his death. The plaintiff has lived in the directly adjacent semi-detached house with his family since 1981. After the death of the testator, the plaintiff connected the semi-detached houses structurally and cadaster-wise **into one unit**. After completing the

extensive refurbishment and renovation work, which was partly carried out by the plaintiff himself, he has been using the semi-detached houses connected in this way as one apartment since August 2016.

According to the Münster Fiscal Court, the tax exemption under Section 13 (1) No. 4c of the Inheritance Tax Act can also cover the acquisition of an apartment located on a developed plot of land if it is spatially adjacent to the apartment already used by the acquirer and both apartments are combined into a single owner-occupied apartment after the acquisition. Regarding the limitation of the living space, according to the wording of the standard, which is based solely on the size of the acquired family home, it is only important that the size of the acquired apartment does not exceed 200 square meters. The total living space of the apartment created because of the connection is not decisive.

A dwelling is intended for self-use for its own residential purposes if the acquirer **intends to** use the dwelling for its **own residential purposes** and implements this intention. The purchaser must designate the apartment **"immediately"**, i.e. without culpable hesitation, for self-use for their own residential purposes. It is incumbent on the acquirer to promote the renovation work and the elimination of any defects in terms of time in such a way that there are no delays which are to be regarded as unreasonable according to the view of the market. However, a disproportionate effort to accelerate the time is not required. Rather, it is sufficient if the purchaser takes all **reasonable** measures. The purchaser is not to be blamed for a delay in moving in due to renovation work if he commissions the work without delay, but the craftsmen commissioned are unable to carry it out in good time for reasons for which the purchaser is not responsible. Another indication of the immediate designation for self-use is the prompt clearing or de-cluttering of the acquired apartment. The court was convinced that the plaintiff in the case in dispute had immediately designated the additionally acquired semi-detached house for his own use for his own residential purposes.

For business taxpayers

Trade tax addition of services under a sponsoring agreement

The plaintiff, which operated a wholesale business, was the main sponsor of a sports club. In the year under dispute, 2015, it spent an amount and, in return, was allowed to use the sports club's logo for advertising purposes, among other things, based on the sponsorship agreements for the 2014/2015 and 2015/2016 seasons. In addition, it was granted advertising on jerseys and other apparel as well as perimeter advertising. From the 2015/2016 season, the plaintiff had access to a floor advertising space. The design and production costs incurred for the advertising measures were borne by the plaintiff. The defendant tax office allocated the estimated expenses for perimeter advertising (including advertising on LED presentation screens and floor advertising spaces) and jersey advertising to the addition provision under § 8 No. 1 letter d GewStG (rental of movable assets) and expenses for visual material (transfer of the club logo for advertising purposes) to the addition provision under § 8 No. 1 letter f GewStG (temporary transfer of rights).

The Federal Fiscal Court denied the trade tax addition. The sponsoring agreements in dispute are contracts of their own kind ("sui generis") with inseparable performance obligations. The Federal Fiscal Court did not recognize any separable essential elements of a rental, lease or rights transfer agreement, but rather a "uniform and indivisible whole".

Wage tax

Regulation on non-taxable attentions adjusted

On October 28, 2022, the Bundesrat approved the Wage Tax Guidelines 2023. They have been fundamentally revised in the new version. Amended and updated wage tax guidelines (LStR 2023) have now been in force since 01.01.2023.

There is a significant restriction to the regulation on **wage tax-free favors**. R 19.6 para. 1 sentence 2 LStR 2023 restricts this from 2023 to employees and their relatives living in the same household. This means that gifts up to a value of **60 euros** are only tax-free if they are given for the benefit of the employee or a relative living in the same household as the employee. For example, wedding gifts from the employer to a child who does not live in the employee's household do not fall under the tax exemption.

Note

Attentions are **benefits from the employer which, in terms** of their nature and value, correspond to gifts which are usually exchanged in social intercourse and do not lead to any significant enrichment of the employee. This includes occasional gifts in kind (e.g. flowers, luxury food, a book/sound carrier,

etc.) up to a value of **60 euros.** Monetary benefits are always part of wages - even if their value is low.

Uniform employment relationship in the case of Employment in two companies - flat-rate wage tax not possible

The requirements for the assumption of low-volume employment are to be assessed exclusively according to social insurance law standards. This is in line with the intention of the legislator, who expressly dispensed with an independent taxable wage limit for lump-sum payments. The tax lump sum rule is thus linked to the social insurance law rule, which, according to the legislator's idea, was intended to avoid discrepancies between the treatment of wages from a marginal employment relationship under contribution law and tax law.

According to the Berlin-Brandenburg Fiscal Court, it is not possible to work for the same employer in a minor job that is not subject to compulsory insurance as well as in a minor job that is not subject to compulsory insurance (due to lack of aggregation). Rather, the wage payments must be added together if they originate from the same employer, even if the employment relationships are structured differently.

Other

Withdrawal taxation

Many people are considering leaving the Federal Republic of Germany, judging by the statements of the Chairwoman of the German Council of Economic Experts. As a result of the amendments to the ATAD Implementation Act, which taxpayers wishing to emigrate have had to comply with since January 1, 2022, the abolition of the deferral rule in the event of a move to an EU or EEA state has been introduced as the most serious tightening. As a result, there is now a risk of taxation of "dry income", i.e. possibly excessive tax payments without an inflow of liquidity.

Alternative solution: The exit tax can be waived retrospectively if unlimited tax liability is re-established within a certain period (seven years).

The Münster Fiscal Court has emerged as a spoilsport, as it decided on 31.10.2019 that the sole return is not sufficient. It must also be shown credibly that the intention to return to Germany already existed at the time of departure. Furthermore, the departure taxation does not cease to apply if this (emigration) fails or is aborted. The exit taxation only ceases to apply retrospectively if the termination of the unlimited tax liability is based on an absence that is only temporary and was intended from the outset.

A disastrous decision for the affected tax citizens!

The **turnaround/rescue in** favor of the taxpayers came with a revision decision of the Federal Fiscal Court. The Federal Fiscal Court considers the characteristic of "only temporary absence" leading to the elimination of the departure taxation - irrespective of an intention to return - to be fulfilled if the taxpayer again becomes subject to unlimited tax liability within the legally determined time frame of currently seven years after the departure.

Dates Taxes/Social Security August/September 2023

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		10.08.2023[1]	11.09.2023[1]
Income tax, church tax, solidarity surcharge		not applicable	11.09.2023
Corporate income tax, solidarity surcharge		not applicable	11.09.2023
Sales tax		10.08.2023[2]	11.09.2023[3]
End of grace period of above tax types when paid by:	Bank transfer[4]	14.08.2023	14.09.2023
	Check[5]	10.08.2023	11.09.2023
Trade tax		15.08.2023[6]	not applicable
Property tax		15.08.2023[6]	not applicable
End of grace period of above tax types when paid by:	Bank transfer[4]	18.08.2023	not applicable
	Check[5]	15.08.2023	not applicable
Social security[7]		29.08.2023	27.09.2023
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.

2 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.

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

4 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.

5 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.

6 In states and regions where Aug. 15, 2023, is a public holiday (Assumption Day), the tax is due Aug. 16, 2023.

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 25.08.2023/25.09.2023, 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.