

Monthly information

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Lösungen für deine Steuern

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Good day,

the Federal Fiscal Court commented on how the constituent elements of "financial participation in the costs of living" of the new statutory regulation are to be interpreted in the context of double budgeting.

In another ruling, the Federal Fiscal Court ruled that the landlord of a vacation home does not generate income from commercial operations if the agent he has commissioned to rent it out on a fiduciary basis offers it in a hotel-like manner, but has his own economic interest in the fiduciary position, in particular, because he provides additional services typical of hotels.

Operators of photovoltaic systems are generally obliged to notify the opening of a commercial operation or permanent establishment and to submit a questionnaire for tax registration. The Federal Ministry of Finance has now decreed that it is not objectionable if the notification and transmission of the questionnaire for tax registration are omitted under certain conditions.

The Nursing Care Support and Relief Act reforms the statutory nursing care insurance system in two steps: The financial basis is to be stabilized as of July 1, 2023. And in a second step, all benefit amounts will be noticeably increased again as of 01.01.2025.

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

Double budgeting: financial participation in the costs of living

The Federal Fiscal Court commented on how the constituent elements "financial participation in the costs of living" of the new statutory regulation are to be interpreted, in particular in what way and in what amount the taxpayer must participate in the costs of living at the main residence.

Living expenses are the costs of the household and other living expenses in the main household. The financial contribution to the costs of living must not be recognizably insufficient. Whether this is the case requires an assessment of the circumstances of the individual case. The law does not provide for a specific limit in terms of amount, nor is ongoing participation required.

To the extent mentioned above, the household and other living expenses incurred in the year shall serve as a benchmark for a financial contribution that is not recognizably insufficient. The taxpayer must present and, if necessary, prove these. This is possible and reasonable for the taxpayer with regard to housing costs, including operating costs for the apartment, as well as for household costs regularly incurred in fixed amounts (e.g. electricity, television, telephone), but also for extraordinary household costs (e.g. maintenance/renovation expenses or larger purchases). In contrast, costs that are regularly incurred in fluctuating amounts (such as, in particular, for food and other household needs) can, in principle, be estimated with recourse to statistical empirical values.

Claiming costs for professional garden maintenance against tax

Taxpayers who hire a professional helper to care for their garden can claim a tax reduction for the costs of household-related services. The prerequisite is that the helper has issued a proper invoice and the amount has been transferred. Whether the property where the gardening work is done is a permanent home, a second home, a weekend home or a vacation home is irrelevant.

It does not matter whether you are a tenant or owner/landlord. The costs for handymen or household-related services are often included in the service charges. Tenants can only claim these if their share - for gardeners, repairs, house cleaning or the janitor - is shown separately in the service charge statement.

Household-related services include common gardening tasks such as lawn mowing, hedge trimming and pest control,

hedge trimming or pest control. Craftsman services include, for example, the construction of a terrace or the laying of turf. In the case of household-related services, 20% of the costs can be deducted, up to a maximum of €4,000, while a maximum of €1,200 can be deducted for craftsmen's services.

Letting of vacation homes - With own-useful trust no income from Commercial enterprise

It was disputed between the parties whether the plaintiff generates commercial income from the rental of three vacation apartments or income from renting and leasing. When renting out a vacation home, a commercial enterprise can only be assumed if the landlord provides certain, significant special services that are not usual for renting out rooms or if a certain entrepreneurial organization - comparable to a commercial accommodation business - is required due to a particularly frequent change of tenants. In each case, the special circumstances of the individual case are decisive. The interposition of a commercial intermediary does not necessarily mean that the landlord is also engaged in a commercial activity. Rather, the decisive factor is the extent to which, in the person of the landlord, the letting of a vacation home is comparable to a commercial accommodation business with regard to the type of property let and the type of letting.

According to the Federal Fiscal Court, the required comparability with a commercial lodging establishment (hotel) exists above all if the apartment is equipped like a hotel or boarding house rooms, is advertised for short-term rental to changing tenants, is offered in a hotel-like manner, i.e. is held ready for rental at any time even without advance notice, and is also in a condition that permits immediate rental; this also applies if there are no bookings. In this respect, it is not decisive whether the apartment is located in a vacation complex or outside such a complex. This is because the provision of premises for letting guests at any time, even at short notice, requires material and personnel precautions that are not associated with the letting of apartments.

Wage tax

Tax exemption for part-time activities

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.

Among other things, there was an amendment to LStR 2023 regarding income from part-time activities as an exercise instructor/trainer (etc.):

Income from part-time activities as an exercise instructor/trainer, etc. is tax-exempt up to the amount of 3,000 euros per year. In addition, part-time voluntary activities for a non-profit corporation are tax-exempt up to the amount of 840 euros. The LStR 2023 contains a clear definition of when such a "part-time activity" exists. According to this, an activity with a regular weekly working time of a maximum of 14 hours (so-called 14-hour limit) is considered to be part-time.

For inheritance taxpayers

Successor heir can also claim lump-sum inheritance allowance

The Federal Fiscal Court had to decide to what extent the lump sum (the so-called inheritance costs lump sum) is to be granted in the case of a subsequent inheritance if only subsequent inheritance assets are acquired, but the acquirer has also incurred costs of the previous inheritance and whether the claiming of the lump sum is opposed by the actually incurred proven costs.

In addition to the previous heir, the subsequent heir can also claim the lump sum. Contrary to the previous case law of the Federal Fiscal Court, the deduction of the lump sum does not require proof that costs were actually incurred. That costs have been incurred, at least on the merits.

According to the Inheritance Tax Act, a total amount of 10,300 euros is deducted without proof. The amount is to be granted only once for each succession, namely only once for several co-heirs. However, for inheritance tax purposes, the succession of a pre-heir and a post-heir does not constitute an inheritance with multiple heirs. Rather, the two events are to be treated as two separate cases of inheritance. It is in line with this system to apply the lump sum twice when determining enrichment.

Procedural law

When is it possible to file an objection in the taxation procedure and what are the consequences?

Every recipient of a tax assessment is familiar with the appeal instructions at the end of the assessment, which refer to the possibility of raising objections against this assessment. In tax law, this is referred to as an objection. The objection must be directed against findings in the notice that lead to a tax that is too high in the opinion of the person concerned. The objection must be addressed in writing or by e-mail to the tax office that sent the notice. There is no need to use any special wording beyond this. However, it must be received by the tax office within one month of notification. This period begins on the 3rd day after the tax office sends it to the post office. In the case of public holidays at the beginning or end of the period, the deadline is extended accordingly. The submitter can also file an objection against a submitted advance return for sales tax or an income tax return within one month.

The objection does not have to be substantiated, but this is highly recommended because otherwise, it is very easy for the tax office to reject the objection. Only objections that have been established in the respective tax assessment can be effectively raised with the objection. For example, in an income tax assessment, no objection can be raised against the amount of the profit share from a partner's participation in a partnership; this must be made against the assessment notice of the partnership. Most recently, it is no longer possible to raise an objection to the assessed value of real property or the assessed amount of real property tax in a notice of assessment of real property tax. In this case, an objection must be raised against the notice on the property tax equivalent amounts main assessment as of 01.01.2022 and the notice on the property tax assessment amount main assessment as of 01.01.2025. An appeal may also be filed against assessed losses from previous years only against this assessment notice, not against the income tax assessment notice in the year of the loss assessment. The due date of the assessed tax is not canceled by the objection. This is only possible with an additional application for suspension of execution. For this, however, there must be "serious doubts about the legality of the tax assessment".

If the tax office recognizes the objections in the objection, it amends the corresponding assessment. Otherwise, the tax office must issue a decision rejecting the

objection. It is then possible to take legal action against this before the Tax Court. A direct action - i.e. without a preceding appeal procedure (objection) - at the tax court is only effective if the tax office agrees (so-called jump action). The objection procedure is free of charge at the tax office. However, it is always important to bear in mind the costs of the appointed advisor, which are not reimbursed by the tax authorities even if the objection is successful. The legal action, on the other hand, is subject to costs. However, any court costs incurred will be reimbursed if the action is successful. In this case, the costs of the consultant can also be reimbursed.

Challenging a wage tax liability notice does not constitute an inconsistent challenge to a wage tax return

By contesting a wage tax liability notice, the wage tax returns or a notice on the lifting of the reservation of verification of the wage tax returns for the filing periods in which the liability facts were realized are not (incidentally) contested at the same time. This was the decision of the Federal Fiscal Court.

Other

Notifications of gainful activity - tax registration of operators of certain small photovoltaic systems

The Annual Tax Act 2022 of December 16, 2022, introduced an income tax exemption applicable as of January 1, 2022 for certain small photovoltaic systems and a zero VAT rate applicable from 01.01.2023 for the supply and installation of certain photovoltaic systems.

Even in cases where the income and withdrawals from the operation of photovoltaic systems are tax-exempt and VAT is not levied on sales from the operation of photovoltaic systems based on the small business regulation, operators (natural persons and legal entities as well as associations of persons) of photovoltaic systems are generally obliged to notify the opening of a commercial operation or permanent establishment and to submit a questionnaire for tax registration.

For reasons of bureaucracy reduction and administrative economy, it is not objected if operators of photovoltaic systems, who

- Traders are, in the case of opening a business limited to the operation of beneficiary photovoltaic systems, and
- are entrepreneurs for VAT purposes whose

business is limited exclusively to the operation of a photovoltaic system and, if applicable, a tax-exempt rental and lease and who apply the small business regulation,

waive the tax notification of the commencement of gainful activity and the submission of the tax registration questionnaire to the competent tax office. The above provision shall apply with immediate effect in all cases where the relevant gainful activity was commenced as of 01.01.2023.

Should it become necessary due to the further circumstances of the individual case, the locally competent tax offices may in such cases separately request the submission of a questionnaire for tax registration.



Repayment of Corona emergency aid: Deadline extended

The emergency aid was granted in the first months of the Corona pandemic as an equity benefit for small businesses and freelancers facing existential hardship as a result of the Corona crisis and was intended to cover liabilities arising from commercial material and financial expenses in the three months following the submission of the application.

It was granted based on a forecast made when the application was submitted. On the basis of the notice of grant, the recipient of emergency aid is obliged to check whether this forecast regarding the liquidity bottleneck expected when the application was submitted has actually materialized or whether the emergency aid must be repaid - if necessary, also on a pro-rata basis.

As of 11/28/2022, emergency aid recipients were sent both postal and email letters reminding them of the obligation to verify the Corona emergency aid they received.

This obligation had to be fulfilled by June 30, 2023.

Deadline extended!

By decision of the Bavarian State Government in the Council of Ministers meeting of June 13, 2023, the deadline for the current voluntary re-registration procedure was extended to **December 31, 2023**.

In North Rhine-Westphalia, the Higher Administrative Court had already ruled that the current re-registration procedures were unlawful. As a result, the deadline for re-registration in NRW was postponed to **November 30, 2023**.

Legislation

MOPeG creates company register for GbR on 01.01.2024

The Act to Modernize the Law on Partnerships (MOPeG) creates a company register for legally capable partnerships under civil law (GbR) in accordance with the new version of Section 705 (2) of the German Civil Code (BGB) as of January 1, 2024. This affects GbRs that are intended to participate in legal transactions themselves. This is not the case for purely internal companies.

Although the MOPeG does not stipulate that a GbR with legal capacity must be entered in the company register, registration is intended to be a prerequisite for carrying out legal transactions which in turn require entry in another register. This results in a de facto compulsory entry for some GbRs. The registered GbR bears the legal form designation eGbR.

Independently of the BGB company register, an obligation to register in the transparency register must be examined.

Care Support and Relief Act goes into effect in July

On June 16, 2023, the Bundesrat approved the Nursing

Care Support and Relief Act (PUEG) passed by the Bundestag on May 26, 2023. The law can now be promulgated in the Federal Law Gazette and then enter into force as planned on 01.07.2023.

	PV-Beitrag für Arbeitnehmer ohne Kind bzw. Elterneigenschaft	PV-Beitrag für Arbeitnehmer mit Kind bzw. Elterneigenschaft	
Gültig ab 01.07.2023	Gesamtbeitrag: 4,0 % Arbeitgeberanteil: 1,7 % Arbeitnehmeranteil: 1,7 % PV-Zuschlag: 0,6 %	Gesamtbeitrag: 3,4 % Arbeitgeberanteil: 1,7 % Arbeitnehmeranteil: 1,7 %	-0,6 % PV-Zuschlag entfällt ab 1. Kind -0,25 % Abschlag ab 2. bis 5. Kind (max. 1,0 %)*
Gültig bis 30.06.2023	Gesamtbeitrag: 3,4 % Arbeitgeberanteil: 1,525 % Arbeitnehmeranteil: 1,525 % PV-Zuschlag: 0,35 %	Gesamtbeitrag: 3,05 % Arbeitgeberanteil: 1,525 % Arbeitnehmeranteil: 1,525 %	

Among other things, statutory long-term care insurance is being reformed in two steps:

The contribution rate will be increased moderately by 0.35% as of 01.07.2023. In the future, the number of children must be taken into account when determining the contribution rate.

The childless supplement will be raised to 0.6 contribution rate points. At the same time, contributors from the second to the fifth child will be relieved - with a reduction of 0.25 contribution rate points for each child up to the age of 25.

On 01.01.2024, the care allowance and the outpatient benefits in kind will each be increased by 5%. On 01.01.2025 and 01.01.2028, the cash benefits and benefits in kind will then be automatically dynamized - in line with price trends.

Entitlement to the so-called care support allowance is being extended. This refers to the wage replacement benefit paid when people are unable to work due to caring for a close relative. This support is provided for up to ten working days per calendar year for each person in need of care.

Dates Taxes/Social Security
July/August 2023

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		10.07.2023 ¹	10.08.2023 ²
Sales tax		10.07.2023 ³	10.08.2023 ⁴
End of grace period of above tax types when paid by:	Bank transfer ⁵	13.07.2023	14.08.2023
	Check ⁶	10.07.2023	10.08.2023
Trade tax		not applicable	15.08.2023 ⁸
Property tax		not applicable	15.08.2023 ⁸
End of grace period of above tax types when paid by:	Bank transfer ⁵	not applicable	18.08.2023
	Check ⁶	not applicable	15.08.2023
Social security ⁷		27.07.2023	29.08.2023
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 penultimate month, 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 25.07.2023/25.08.2023, in each case at 0:00). 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.
- 8 In states and regions where Aug. 15, 2023, is a public holiday (Assumption Day), the tax is due Aug. 16, 2023.

Imprint

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