Monthly information

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solvetax
solutions for your tax

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Welcome to the tax news ,

In the case of so-called bond stripping of federal bonds held as private assets, according to a ruling of the Tax Court of Baden-Württemberg, when the interest coupons are sold, the acquisition costs of the bond (including interest coupons) are to be divided between the interest coupons and the bond shell (ordinary right).

According to a recent ruling by the German Federal Fiscal Court, tenants can claim expenses for household-related services and craftsmen's services against tax, even if they have not concluded the contracts with the service providers themselves.

In another ruling, the Federal Fiscal Court commented on the existence of a tax deferral model in connection with the acquisition of leveraged bearer bonds.

In addition, the Federal Fiscal Court commented on whether and, if so, from when online poker playing, which is regularly part of the players' hobby, is exercised "professionally" and whether online poker winnings, insofar as they do not constitute income from business operations, are to be qualified as other income.

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

Allocation of acquisition costs in the case of bond stripping for federal bonds held as private assets

On the day of purchase, the purchaser of a German federal bond instructed the custodian bank to separate the interest coupons from the bond wrapper (so-called **bond stripping**). A few days later, he sold the interest coupons and realized a profit. Still, a few days later, he sold the ordinary right to the GmbH, in which he held 50% of the shares. In his income tax return, he declared the proceeds from the sale of the interest coupons as a domestic gain from the sale of investments. He declared a capital loss from the sale of the bond shell. In doing so, he deducted the entire acquisition costs of the Federal bond from the sale price. The defendant's tax office apportioned the acquisition costs between the bond shell (ordinary right) and the interest coupons.

The Baden-Württemberg Tax Court ruled in favor of the tax office. Both the isolated sale of the interest coupons and the sale of the bond shell would have resulted in **income from capital assets.** Since the flat tax rate of 25%, which generally applies to income from capital assets, does not apply if capital income is paid by a corporation to a shareholder who holds at least 10% of the company, only the gain from the sale of the interest coupons is subject to the flat tax rate, but not the gain or loss from the sale of the bond shell to the GmbH. The latter is subject to the general tax rate, as the plaintiff held 50% of the shares in the GmbH in the year in dispute.

Tax reduction for expenses for household-related services by tenants

The plaintiffs lived in a rented condominium. In the **service charge statement,** the landlord charged them for staircase cleaning, snow removal services, garden maintenance and for checking smoke alarms. They claimed **tax relief for household-related services** and **craftsmen's services**. The tax office and the tax court rejected this.

The Federal Fiscal Court, however, ruled in favor of the taxpayers. The tax reduction is not precluded by the fact that tenants do not regularly conclude the contracts with the respective service providers **themselves, e.g. the** cleaning company and the craftsman's business. It is sufficient for the granting of the tax reduction that the household-related services and craftsman services have **benefited the tenant**. Insofar as the law also requires that the taxpayer has received an invoice for the expenses and that payment has been made to the account of the provider of the service, it is also sufficient to provide **evidence in the** form of a statement of ancillary housing costs or a certificate that corresponds to the model recognized by the tax authorities. However, both must show the type, content and time of the service as well as the service provider and service recipient together with the remuneration owed including the reference to the non-cash payment. Only if there is any doubt as to the correctness of these documents, the tax office or, in the case of legal action, the tax court is at liberty to demand that the taxpayer submit the original or a copy of the invoices. In this case, the tenant must obtain the invoices from the landlord.

Note

This case law applies accordingly to **expenses incurred by condominium owners** if the commissioning of household-related services and craftsmen's services was carried out by the **condominium owners' association** - regularly represented by its administrator.

Inland navigation operator resident in Germany and employed by Swiss employer - taxation of salary

If an inland waterway skipper who is only resident in Germany is employed on the Rhine by a Swiss employer, Germany has the right to tax the salary, according to the Baden-Württemberg Fiscal Court, insofar as the inland waterway skipper worked in Germany and other third countries outside Switzerland. In Germany, the salary is only tax-exempt for the working days on which the inland skipper performed his work in Switzerland. Switzerland's **exclusive right of taxation** as a company state cannot be derived from the double taxation agreement with Switzerland.

The fact that the Swiss tax administration interprets the regulation differently and therefore taxes the plaintiff's entire salary in Switzerland is irrelevant in this respect. The double taxation triggered by this can only be eliminated, if necessary, within the framework of a mutual agreement procedure.

Note

This case law is generally transferable to other employees.

Higher pension due to the "maternity pension" - adjustment of the tax-free pension component

The increase of an already current statutory old-age pension by means of a supplement in personal pension points for child-raising periods **("maternity pension"**) leads to an adjustment of the previous tax-free part of the pension (pension allowance). Regular pension adjustments made in the meantime are not taken into account. This was the decision of the Federal Fiscal Court.

Move to new apartment due to separate workrooms for spouses - moving expenses as income-related expenses

Relocation expenses may be **work-related if** the relocation leads to a significant facilitation of working conditions. Such a facilitation can also be assumed (during the Corona pandemic) if a move is made in order to set up a study for each spouse in the new apartment so that they can once again pursue their respective activities undisturbed in the home office. This was the decision of the Hamburg Fiscal Court.

The plaintiffs had searched for and selected a new apartment with exactly two additional workrooms. In view of the plaintiffs' different working methods, the establishment of two workrooms is **necessary** for the (undisturbed) performance of their respective activities. Moreover, the apartment does not differ from the previous apartment to such an extent that there was reason to assume here that an increase in living comfort had been the reason for the move.

Is there a tax deferral model in the case of a single investment?

If a taxpayer generates **negative income from** capital assets by participating in a company by way of a so-called **individual investment,** the **exploitation of a model arrangement for the purpose of generating losses on the** basis of a preconceived concept requires the taxpayer to act like a passive investor in the development of the business idea, the drafting of the contract and the implementation of the contract.

A **tax deferral model** is to be assumed if tax advantages in the form of negative income are to be achieved on the basis of a model-like design. This is the case if the taxpayer is offered the opportunity to **offset** losses against other income, at least in the initial phase of the investment, on the basis of a predefined concept. It is irrelevant on which regulations the negative income is based. According to the Federal Fiscal Court in a recent decision.

Note

Losses related to a tax deferral scheme may not be offset against other income, but only against future profits from the same source of income.

Online poker game: winnings may be subject to income tax

A mathematics student started playing online poker in the variant "Texas Hold'em/Fixed Limit" in 2007. Starting with small stakes and winnings, he gradually increased his stakes. His winnings also increased significantly over time. In the year in dispute, 2009, he had already made a profit of over 80,000 euros from online poker, which continued to rise in subsequent years. In the period from July to December 2009 alone, his total registered playing time amounted to 673 hours. The Tax Court assessed the facts of the case to the effect that the plaintiff had been engaged in commercial activities from October 2009 onwards and that, consequently, the profit of a good EUR 60,000 generated in the months from October to December 2009 was subject to income tax.

The Federal Fiscal Court confirmed this and ruled that winnings from online poker games can also be subject to income tax as **income from business operations.** In doing so, it followed up on earlier decisions on poker games in the form of face-to-face tournaments and in casinos. According to these decisions, poker is not a pure game of chance in terms of income tax law, but is also characterized by elements of skill. This also applies to online poker, even if no personal contact with the other players is possible there. However, regardless of the form of the poker game, not every poker player is subject to income tax. For recreational and hobby players, it is still a private activity in which winnings (and also losses) have no tax impact. However, if the scope of a private hobby activity is exceeded and the player is no longer concerned with satisfying his gaming needs, but with generating income, his actions are to be regarded as commercial. The decisive factor is the structural comparability with a trader or professional gambler, e.g. the planned nature of the activity, the exploitation of a market or the amount of money and time invested.

For inheritance/gift tax payers

Granting of a right to a dwelling during one's lifetime - gift on death

If the owner of an apartment grants the donee, free of charge, an apartment right (right of joint use) and, for the period after his death, a personal apartment right, and if both are entered in the land register during his lifetime, this constitutes a gift on death with regard to the apartment right. This was the decision of the Hamburg Fiscal Court.

The **special feature of** a gift on death is the contractual agreement that the intended movement of assets is to occur (finally) only with or after the death of the donor. This agreement contains a **time limit** and at the same time a **condition:** The donation is postponed until the death of the donor, but also occurs with this (only temporally uncertain) event only if he is still alive at that time. A gift subject to a condition of survival is also a gift if the legal consequences of the fulfillment transaction occur with the death of the donor without further legal acts. This was the case here.

Gift tax for compensation agreed in prenuptial agreement for waiver of civil divorce consequences?

The consideration received by a spouse for waiving equalization of gains, pension equalization, postmarital maintenance and claims from the division of household effects in a notarized marriage contract constitutes a benefit in kind. The waiver is a consideration that cannot be assessed in money. The taxation of the benefit does not interfere with the scope of protection of the marriage. This was the decision of the Fiscal Court of Hamburg.

An appeal against the decision has been lodged with the Federal Fiscal Court.

Corporate income tax

Concept of "hidden profit distribution (vGA)" in tax law

A **hidden profit distribution (vGA)** is understood to be a reduction in assets or a prevented increase in assets at a corporation that is caused by the corporate relationship, affects the amount of the difference within the meaning of Sec. 4 (1) Sentence 1 EStG (profit or loss) and is not based on a profit distribution resolution in accordance with the provisions of corporate law. Accordingly, the vGA has its source at a corporation in which the recipient of the vGA - or a person closely related to him - holds an interest. Very often, a shareholder has further business relations with his investee company in addition to his pure shareholder position. This may be the position as employed managing director, the leasing of real estate to the company, the sale of products for further processing at the company or the granting of loans.

In all these cases, in order to **avoid a vGA, it is** first essential that in these business relationships contracts are concluded as between strangers, then corresponding agreements are also recognized for tax purposes. In particular, if the shareholder has a controlling position due to the size of his shareholding, the company may not grant him any **advantages that** a prudent and conscientious businessman would not have granted to a person not involved in the company.

In the first step, the tax office then examines the existence of a corresponding contract under civil law and, in the second step, the appropriateness of the compensation paid by the corporation. If one of these requirements is violated, a vGA exists. In the absence of a management contract, for example, this would be the full amount of the remuneration, and in the case of inappropriate remuneration, the inappropriate portion. Under commercial law, the remuneration must nevertheless be recognized in the full amount agreed. It is ultimately owed by the company, but is then added back to the profit outside the balance sheet as part of the determination of income for tax purposes. This allocation then also automatically applies to trade tax.

The need for an agreement that is effective under civil law requires a clear and unambiguous contract concluded prior to performance, which must then also be executed accordingly. For example, a bonus cannot be effectively granted to a shareholder-director, even if it were customary and appropriate. In the absence of an agreement, this is also not appropriate compensation, be it, for example, for a property provided or a loan granted, a deductible operating expense of the company, but a vGA.

The **addition of the vGA to the** Company's **income means that** it is taxable for the shareholder as income from capital assets pursuant to Sec. 20 (1) No. 1 EStG when it is paid to him. This means that 25% capital gains tax must be withheld and paid from the payment at the time it is received. With this deduction, the shareholder's income tax is settled if he does not apply for a "favorable tax assessment". However, this

application is not possible in the case of a vGA if the shareholder holds an interest of 10% or more in the company. In the case of a shareholding of 25% or more or 1% and simultaneous professional activity for the company, the vGA is subject to the normal standard tax rate without a settlement effect.

For VAT payers

Cooking event as a company Christmas party: Input tax deduction for a company event

If an entrepreneur purchases services for so-called company events (here: Christmas party), he is only entitled to an input tax deduction if these do **not exclusively** serve the private needs of the company employees, but are caused by the special circumstances of his economic activity. The input tax deduction for so-called **attentions** (exemption limit of 110 euros per employee and calendar year) is based on the overall economic activity of the entrepreneur. The costs of the external framework of a company event are to be included in the calculation of the **110 euro exemption limit in** any case if it is a uniform service.

According to the Federal Fiscal Court, if the sole purpose of a company event is to **improve the working atmosphere** by organizing leisure time together, the services purchased for the company outing are exclusively related to the private needs of the staff and thus constitute a **withdrawal that does** not entitle the staff to an input tax deduction. The Christmas party in dispute was not limited to the consumption of food and beverages in a festive setting, but took place as part of a "cooking event" in which the participants prepared the joint dinner themselves under the guidance of professional chefs. Such "teambuilding events" are generally known to be able and intended to improve the performance and willingness of employees within the respective department and between different departments. The participants work on a common goal, get to know each other better in the process, and thus develop a sense of togetherness that can lead to an improvement in the working atmosphere.

Social security

Social security liability of a one-person UG

If a **one-person entrepreneurial company (UG)** contractually undertakes towards another company to perform activities which, by their nature, require integration into the work organization of the other company and the issuance of instructions to the instructors there, express contractual agreements between the shareholder-manager of the UG performing the activity himself and the other company are not required for the establishment of a dependent employment relationship.

Comparable to the legal institution of the fictitious employment relationship pursuant to Section 10 (1) Sentence 1 AÜG in the case of an ineffective employee leasing, the legal assessment as employment is rather determined on the basis of the agreements between the UG and the other company as well as the practical implementation of this contract. Thus the Federal Social Court.

Note

A status determination procedure is the only way to obtain legal certainty.

Dates Taxes/Social Security

September/October 2023

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		11.09.2023[1]	10.10.2023[2]
Income tax, church tax, solidarity surcharge		11.09.2023	not applicable
Corporate income tax, solidarity surcharge		11.09.2023	not applicable
Sales tax		11.09.2023[3]	10.10.2023[4]
End of grace period of above tax types when paid by:	Bank transfer[5]	14.09.2023	13.10.2023
	Check[6]	11.09.2023	10.10.2023
Social security[7]		27.09.2023	10/26[8] /10/27/2023
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 quarterly payers for the previous calendar quarter.

3 For the past month, in the case of 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 a 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 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 25.09.2023/24.10.[8] /25.10.2023, 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.

8 Applies to federal states in which Reformation Day is a public holiday.