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Good day,

the German Federal Fiscal Court commented on whether severance payments made as compensation for the loss of income from employment can be effectively transferred to working time accounts (Wertguthaben) or transferred to the German Pension Fund (Deutsche Rentenversicherung Bund) on a tax-free basis to avoid an inflow to employees.

In another ruling, the Federal Fiscal Court commented on the requirements for the taxpayer's "need to know" of a third party's "VAT fraud" regarding the legitimacy of an input tax deduction.

On 11.10.2023, the Federal Cabinet adopted the Ordinance on Social Security Calculation Parameters 2024.

The Energy Efficiency Act was passed by the German Bundestag on September 21, 2023 sets clear energy efficiency targets. The law also includes concrete measures for the public sector and companies and defines efficiency standards for data centers for the first time.

If entries have not yet been made in the transparency register, they should be made as a matter of urgency, otherwise, fines may be imposed. The Federal Ministry of Finance has again pointed this out in a letter to associations.

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

Consideration of the energy price flat rate in the amount of 300 Euro in the tax return

If pensioners have received the "energy price lump sum for pensioners" in December 2022 through the Deutsche Post AG pension service (statutory pension insurance) or the German Knappschaft-Bahn-See pension insurance or the agricultural pension fund, the amount paid out does not have to be reported in the income tax return for 2022 as an exception. This is because the tax office receives an electronic notification of the payment and will automatically take this flat-rate energy allowance into account for 2022.

If taxpayers have earned income from agriculture and forestry, business operations, self-employment or from active employment as employees in 2022, they are entitled to the "energy price lump sum for employed persons" in the amount of 300 euros. No entries need to be made in the income tax return. If taxpayers have received income from an active employment relationship, the flat-rate energy allowance has usually already been paid out via the employer. If taxpayers have not yet received an energy price allowance and belong to one of the groups of persons, the payment will be made subsequently by the income tax assessment from the responsible tax office. The tax office automatically takes the flat-rate energy allowance into account.

Note

The entry for the energy price flat rate in the income tax return is only to be made if taxpayers have exercised a short-term or marginal employment relationship (mini-job) or a temporary activity in agriculture and forestry in 2022. In this case, the "Annex Other" must also be submitted.

If, on the other hand, taxpayers only have income from a marginal employment relationship (mini-job) in 2022 and have already received the flat-rate energy tax from their employer, then no income tax return is required in this respect.

Uniform examination of the intention to generate profit for all sold business shares

The dispute concerned the valuation of a tax loss generation by creating a new share in a corporation by means of a capital increase resolution with a high premium and subsequent resale to the spouse.

The Federal Fiscal Court ruled that losses on disposals generated to achieve tax advantages do not, as a rule, call into question the intention to generate profits, but must be assessed as to whether legal structuring opportunities (Section 42 AO) have been abused. If shares in a corporation are acquired at different times and at different acquisition costs, it is not permissible to aggregate the individual shares and form an average acquisition price. As a result, the profit or loss from the sale of shares in a corporation must be determined pro rata.

In connection with income from Section 17 of the German Income Tax Act (EStG), the Federal Fiscal Court states that, in principle, a taxpayer is free to decide whether, when and to whom he sells his shares. This therefore also applies if the disposal results in a loss. The consideration of a loss on disposal is not only in line with Sec. 17 EStG, but also complies with the principle of taxation according to ability to pay and is thus not abusive of the law from the outset.

The premium paid for a specific share increases the acquisition costs of this share, even if the sum of the nominal amount and the premium exceeds the market value of the share (so-called excess par issue). This applies in any case to disposals up to July 31, 2019.

Note

However, it should be noted that in this case the disposal took place before July 31, 2019. For subsequent disposals, a change in the Income Tax Act must be observed, according to which premiums from an over-par issue must be distributed equally among all shares held by the taxpayer.

Tax reduction for the use of craftsmen's services in accordance with Section 35a (3) of the German Income Tax Act (EStG)

In addition to the (actual) running of a household, claiming the tax reduction for craftsmen's services pursuant to Section 35a (3) EStG does not require any special right of use on the part of the taxpayer. Thus, a taxpayer may also run a household in premises provided free of charge. It is harmless if the taxpayer has committed himself to a third party to bear the expenses for the craftsman services.

The original view of the lower court that the tax reduction requires that the services are provided for the benefit of an asset that is owned - at least economically - by the taxpayer or to which the taxpayer has a compulsory right of use, was refuted by the ruling of the Federal Fiscal Court. The tax reduction for craftsman services does not require any special right of use by the taxpayer in addition to the actual running of a household. Consequently, the taxpayer may also run a household on premises provided free of charge.



If the conditions for the tax reduction for craftsmen's services are otherwise met, this can also be claimed if the taxpayer has undertaken a third party to bear the expenses for the craftsmen's services. It is also irrelevant if this is done voluntarily, i.e. without a legal obligation, as in the case in question.

The Federal Fiscal Court considered it irrelevant that the craftsman services are also to be recognized if the taxpayer pays for the measure alone, although this benefits the entire house (in the case of dispute: roof renovation). If the taxpayer receives reimbursement of expenses - from whomever - this leads to a reduction in the tax reduction. According to the Federal Fiscal Court, any theoretically conceivable claims for compensation are not to be offset against the payments made until they have been satisfied.

For persons liable for income tax

Compensation for dismissal: Inflow of wages in the case of credit balances - liability for wage tax

The Federal Fiscal Court commented on whether severance payments made as compensation for the loss of income from non-independent work can be effectively added to time value accounts (Wertguthaben) or transferred to the German Pension Insurance (DRV) Bund tax-free in order to avoid an inflow to the employee. The employee shall not be entitled to wages (redundancy payment) even if the agreement on the allocation to a credit balance of the employee or the transfer of the credit balance to the DRV Bund in accordance with the agreement should be invalid under social insurance law, insofar as all parties involved nevertheless allow the economic result to occur and exist. In the case in dispute, it can be ruled out that the

severance payments, insofar as they were to be allocated to the respective long-term accounts, accrued to the employees in the disputed period. Consequently, the wage tax did not accrue and an (accessory) liability of the plaintiff cannot be considered. This result is confirmed by the fact that the DRV Bund has to withhold and pay the wage tax for each partial payment from a credit balance.

Corporate income tax

No vGA in the case of premature redemption of a reinsured pension commitment to a controlling shareholder-managing director

The Münster Fiscal Court commented on whether the early redemption of a reinsured pension commitment to a controlling shareholder-managing director, which is agreed due to the crisis of the GmbH, leads to a hidden profit distribution (vGA).

From a tax law perspective, it is not objectionable if a pension commitment is not made dependent on the beneficiary's leaving the employment relationship as a managing director upon the occurrence of the pension event. In such a case, however, a prudent and conscientious managing director would, in order to avoid a vGA, demand that the income from the continuing employment as managing director be offset against the pension benefits or would defer the agreed start of the pension payment until the beneficiary has finally terminated his or her position as managing director. The actual purpose of the company pension for the period of continued employment would be missed if a current retirement pension were paid and at the same time the employment relationship was continued in the previous manner in return for a current salary.

According to these standards, the court is convinced that the payment made by the GmbH to the plaintiff to settle the pension commitment in favor of the plaintiff was not for corporate, but for business reasons and therefore there was no vGA.

For VAT payers

"Need to know" about third-party VAT fraud

According to a ruling of the Federal Fiscal Court, the measures that may reasonably be required of a taxpayer to prevent its own involvement in third-party VAT fraud depend essentially on the circumstances in

each case, which must be determined in accordance with the rules of evidence under national law, which must not impair the effectiveness of Union law.

A taxable person may not generally be required to check whether the issuer of an invoice for the supply of goods in respect of which the right to deduct VAT is claimed had the goods in question at his disposal, was able to supply them and complied with his obligations regarding the declaration and payment of VAT. However, if there are indications of irregularities or VAT fraud, the taxable person may be obliged to obtain information on another trader from whom he intends to purchase goods or services in order to satisfy himself of the trader's reliability.

Note

For the purchaser to be able to deduct input tax, there is no general requirement that the VAT incurred has actually been paid by the subcontractor.

However, the purchaser's right to deduct input tax may be denied if the purchaser knew or should have known that the supplier or another party was involved at a previous or subsequent stage of the transaction in an act of evasion of VAT or in obtaining an unjustified deduction of input tax within the meaning of Section 370 of the German Fiscal Code (AO) or in damage to VAT revenue within the meaning of Sections 26b and 26c of the Turnover Tax Act (Section 25f of the Turnover Tax Act).

Legislation

Demand for permanently reduced sales tax in the catering industry

A permanent reduced sales tax rate of seven percent on the consumption of food in restaurants failed to win a majority in the Bundestag on Sept. 21, 2023.

Mecklenburg-Western Pomerania and Saxony-Anhalt are calling for the reduced VAT rate of seven percent to be maintained in the catering sector on a permanent basis. On 29.09.2023, a corresponding initiative was presented in the Bundesrat and referred to the specialist committees. On October 9, 2023, the specialist committees of the Bundesrat - the Finance Committee as the lead committee, the Economics Committee as a co-advisory committee and the Committee for Labor, Integration and Social Policy - called for the inclusion of the deferral of the reduced VAT rate in the catering sector beyond December 31, 2023 in the Growth

Opportunities Act as part of their opinion on the Growth Opportunities Act.

The Federal Council will decide on 20.10.2023 which recommendations will be made.

Federal Cabinet decides on social insurance calculation sizes 2024

On October 11, 2023, the Federal Cabinet approved the Ordinance on Social Security Calculation Parameters 2024. The Bundesrat must still approve it before it is promulgated in the Federal Law Gazette.

The reference value is of great importance for many values in social insurance - among other things for determining the **minimum contribution assessment bases for** voluntary members in statutory health insurance or for calculating contributions for self-employed persons subject to compulsory insurance in statutory pension insurance. In 2024, the reference figure will rise to **3,535 euros/month** (2023: 3,395 euros/month); the **reference figure (East)** to **3,465 euros/month** (2023: 3,290 euros/month).

The **contribution assessment ceiling in the general pension insurance scheme** will increase to **7,550 euros/month** (2023: 7,300 euros/month) and the **contribution assessment ceiling (East)** to **7,450 euros/month** (2023: 7,100 euros/month).

The nationally uniform compulsory insurance limit in statutory health insurance (**annual income limit**) is **69,300 euros in 2024** (2023: 66,600 euros). The **income threshold for statutory health insurance, which is** also uniform throughout Germany, will rise to **62,100 euros per year** (2023: 59,850 euros) or 5,175 euros per month (2023: 4,987.50 euros).

Energy efficiency law passed

With the Energy Efficiency Act (EnEfG) passed by the German Bundestag on September 21, 2023, **companies** with large energy consumption (more than 7.5 GWh on average) will also be required to introduce energy or environmental management systems, and companies with a total final energy consumption of 2.5 GWh or more are to record and publish economic energy efficiency measures in implementation plans. However, the companies themselves decide on the implementation of suitable efficiency measures.

Energy efficiency standards apply to **data centers**. Waste heat must also be used in the future, as this is where the potential for greater energy efficiency lies dormant. In addition, all operators of large data

centers are to use electricity from renewable energies in the future, as well as enter information on their energy consumption in a public register and inform their customers about their specific energy consumption.

The law is not subject to approval. The Bundesrat approved the law on October 20, 2023. It will now be forwarded to the Federal President for signature via the Federal Government.

Building energy law approved

The so-called Heating Act, which the Bundestag passed on September 8, 2023, cleared the final parliamentary hurdle in the Bundesrat on September 29, 2023. This automatically approves the law, which did not require the consent of the states. It will now be forwarded via the federal government to the Federal President for signature and can then be promulgated in the Federal Law Gazette. It is expected to enter into force in large parts on 01.01.2024.

The current revision also dovetails with the Building Energy Act (GEG) with a new law on "Heat Planning and Decarbonization of Heat Networks" (WPG). The new version of the GEG stipulates that from 2024, all newly installed heating systems must be powered by at least 65 percent renewable energies.

Labor law

The certificate may not be deteriorated because of change requests

If an employer worsens a reference because the employee has requested changes to it, it violates the prohibition on disciplinary action. According to the Federal Labor Court, an employer may not make the third version of the reference worse and omit the thank-you formula previously included in it simply because the employee had already requested changes to it twice before. It is true that there is in principle no entitlement to a thank-you formula at the end. However, to delete it because of the permissible exercise of statutory

rights would violate the prohibition of regulation under Section 612a of the German Civil Code (BGB), which continues to apply even after termination of the employment relationship. Therefore, there is a claim to the thank-you formula.

Other

Obligation for (almost) all companies to be entered in the transparency register

Almost all companies are required to register and report to the transparency register as of 01.08.2021. If entries have not yet been made, they should be made as a matter of urgency. Otherwise, fines may be imposed. The Federal Ministry of Finance has once again drawn attention to this in a letter to associations.

All legal entities under private law (e.g. AG, GmbH and Unternehmergesellschaft (haftungsbeschränkt)) and registered partnerships (e.g. OHG, KG, PartG) as well as foundations without legal capacity, trusts and comparable associations are affected.

Sole proprietorships, registered traders (e. K.) and civil law partnerships (GbR) are currently not affected, although the latter will become partially subject to registration because of the reform of the law on partnerships (MoPeG) from 01.01.2024. With the MoPeG, GbRs will be able to register in a new company register to be created. As a result, the GbR in the form of the so-called "eGbR" will be one of the registered partnerships and as such will also have to be entered in the transparency register.

The transitional periods have now expired, i.e. all those affected must take action, regardless of whether the information is already available from other public registers (e.g. commercial, cooperative, partnership registers).

Dates Taxes/Social Security
November/December 2023

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		10.11.2023 ¹	11.12.2023 ¹
Income tax, church tax, solidarity surcharge		Not applicable	11.12.2023
Corporate income tax, solidarity surcharge		Not applicable	11.12.2023
Sales tax		10.11.2023 ²	11.12.2023
End of grace period of above tax types when paid by:	Bank transfer ⁴	13.11.2023	14.12.2023
	Check ⁵	10.11.2023	11.12.2023
Trade tax		15.11.2023	not applicable
Property tax		15.11.2023	not applicable
End of grace period of above tax types when paid by:	Bank transfer ⁴	20.11.2023	not applicable
	Check ⁵	15.11.2023	not applicable
Social security ⁶		28.11.2023	27.12.2023
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 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 24.11.2023/21.12.2023, 0:00 hours in each case). 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.

Imprint

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