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Good day,

besides interesting decisions of the courts, the focus of this month's information falls on legislation.

The Bundestag passed the Building Energy Act (GEG) amendment on 08.09.2023. It is to come into force on 01.01.2024, but must first pass the Bundesrat. Time for a short overview of the so-called heating law.

In addition, on August 30, 2023, the German Cabinet approved the draft of the "Act to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Tax Fairness" - in short: Growth Opportunities Act. It is intended to boost the economy with the measures it contains.

In addition, the German Federal Ministry of Labor and Social Affairs has planned comprehensive amendments to the Working Hours Act to introduce a general obligation to record working hours. The corresponding draft bill is to be passed by the end of 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.

Legislation

**Brief overview of the amendment to the Building Energy Act**

The Bundestag passed the Building Energy Act (GEG) amendment on 08.09.2023. It is to come into force on 01.01.2024.

Accordingly, the renewable heating obligation will only apply to the installation of **new heating systems** from 01.01.2024.

**Existing heaters** can continue to operate. **Broken heating systems** can be repaired. If a natural gas or oil heating system is irreparably defective (heating disaster), there are transitional solutions and multi-year transition periods. In cases of **hardship**, owners can be exempted from the obligation to heat with renewable energies (e.g. in the case of economic overload or if the conversion is not reasonable due to special personal circumstances).



There is a **time gradation** between new construction and existing buildings.

The renewable heating obligation will apply to most new buildings from 01.01.2024. The date on which the building application is submitted is decisive. For existing buildings and new buildings erected in gaps between buildings, there are longer transition

periods to enable better coordination of the investment decision with local heating planning.

**Municipal heating planning** is to be initiated in the municipalities. They must determine by June 30, 2028 at the latest (major cities June 30, 2026) where heating networks or climate-neutral gas networks will be expanded in the coming years. This process is to be promoted by a law on heat planning with uniform federal requirements.

The **transition periods for** existing buildings and new buildings erected in vacant lots are to be dovetailed with municipal heating planning. In large cities (more than 100,000 inhabitants), the installation of heating systems with 65% renewable energy is therefore to become mandatory after **June 30, 2026** at the latest; in smaller cities (less than 100,000 inhabitants), this is to apply after **June 30, 2028** at the latest. This means that new gas or oil heating systems are only to be

permitted from 01.07.2026 or 01.07.2028 if they are operated with 65 % renewable energy. This is achieved, for example, by combining them with a heat pump (so-called hybrid heating) or proportionally with biogas. If a decision has already been made in a municipality based on a heating plan on the designation as a heating network area (new or expansion) or as a hydrogen network expansion area before the middle of 2026 or the middle of 2028, the installation of heating systems with at least 65 % renewable energies is to become binding here already then.

The switch to a climate-friendly heat supply is to be facilitated by **subsidies**. The subsidies are to be more socially oriented: Lower and middle-income groups (up to 40,000 euros taxable household income per year) will receive an income-related bonus of 30%. This is in addition to the basic subsidy of 30%, which is available to all. A climate speed bonus of 20% is also available for replacing an old fossil fuel heating system before 2028. The maximum possible subsidy is 70 % of the investment costs.

**Tenants** are to be **protected** from **rent increases**. On the one hand, landlords are to invest in new heating systems and modernize them. In the future, they will be allowed to charge up to 10% of the modernization costs. However, they must deduct a government subsidy from this sum, and the modernization allocation will be capped at 50 cents per month and square meter.

**Note**

The so-called heating law still has to pass the Bundestag.

**Draft Growth Opportunity Act passed**

On Aug. 30, 2023, the German Cabinet approved the draft of the **"Act to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Tax Fairness" (Growth Opportunities Act)**. The law is intended to boost the economy, more precisely:

- Providing impetus for more growth, investment and innovation
- contribute to tax simplification
- contribute to the detection and elimination of undesirable tax arrangements

### Measures with retroactive effect from 2023:

The percentage used to determine the **pension allowance** will decrease more slowly: annually by 0.4% from 2023, instead of the previous 0.8%. The maximum amount is also to decrease by €30 per year from 2023 (instead of €60) and the supplement to the pension allowance by €9 per year (instead of €18).

The so-called "**December aid**" 2022 paid to consumers as relief for high gas and district heating costs is not to be taxed after all. The regulations on this are to be deleted completely.

Due to the deferred **taxation of pension income**, the share of taxable pensions is steadily increasing. At the same time, the proportion of pension insurance contributions that can be deducted from tax as special expenses is also increasing. From 2023, the increase in the taxable portion is to be reduced to half a percentage point per year for each new year of retirement. In this way, pensions will not be taxed at 100% until the 2058 retirement cohort.

With the adjustment to the **age relief amount**, the applicable percentage will no longer be reduced in annual steps of 0.8 percentage points from 2023, but only in annual steps of 0.4 percentage points. The maximum amount will decrease by EUR 19 per year from 2023 instead of the previous EUR 38.

The planned amendments are intended to exempt **small business owners** from having to submit an annual VAT return as of 2023. However, this will not affect cases covered by Section 18 (4a) of the German Turnover Tax Act (UStG), such as traders who purchase goods within the EU. The obligation to submit the return is also to remain in place if the tax office demands the return.

### Measures valid from 2024:

For business trips or in the case of a double household, **additional expenses for meals** can be taken into account as income-related expenses for tax purposes. These flat rates are to be increased:

- from 28 euros to 30 euros for business trips lasting several days and
- from 14 euros to 15 euros for arrival or departure days and
- from 14 euros to 15 euros for days with more than 8 hours' absence from the home or first place of work.

A new **exemption limit** is to be introduced for

**income from renting and leasing.** Anyone with income of less than 1,000 euros per year will no longer have to pay tax on it. However, if the expenses surrounding the rental business exceed the income, it is to be possible to apply for taxation as income from letting and leasing. In this way, landlords will be able to take their losses into account.

#### Note

Further evidence of the misunderstood goal of reducing bureaucracy. Annex V must be prepared in any case, so that only then does one know whether the exemption limit applies or not.

With the so-called **loss carryback** according to § 10d EStG, losses can be offset against profits from the two previous years. This reduces the tax burden for the previous years. This loss carryback is to be extended to 3 years. The recently temporarily increased amount limit of 10 million euros is to apply permanently. For the period 2024 to 2027, the loss carryforward will be limited to 80% of the total amount of income for the loss carryforward year.

Costs for certain acquisitions can be fully deducted from tax immediately if they do not exceed 800 euros (net) (**low-value assets**). From 2024, the amount is to be raised to 1,000 euros (net).

There is a temporary reintroduction of **declining balance depreciation for movable** fixed assets acquired or manufactured from 01.10.2023 and before 01.01.2025 of up to 25%, a maximum 2.5 times the straight-line depreciation.

Furthermore, the increase in the **amount limits** for compound items to 5,000 euros for assets that are acquired, manufactured or added to business assets after December 31, 2023 is intended to help the economy. The time period for the reversal of these compound items will be shortened to 3 years.

For **residential buildings** built or purchased between 01.10.2023 and 30.09.2029, **degressive depreciation** is to be introduced. In the year of completion, 6% of the costs are thus to be depreciated on a pro rata basis. The change to straight-line depreciation is to be possible at any time.

Companies that generate a profit of no more than 200,000 euros a year are allowed to write off their investment costs - in addition to scheduled annual

depreciation, also via **special depreciation** under Section 7g of the German Income Tax Act (EStG). From 2024, the maximum depreciation rate is to be increased to 50%.

In the future, entrepreneurs whose tax for the previous year did not exceed 2,000 euros will no longer have to submit quarterly **advance VAT returns**. Previously, the limit was 1,000 euros.

In the future, entrepreneurs will be able to spend higher amounts on **gifts to business partners** and thus benefit from a tax perspective: If the costs are below the exemption limit of 50 euros net per year, they can be deducted as business expenses. Previously, this limit was 35 euros per year.

Up to now, companies with sales of up to 600,000 euros have been able to apply for sales tax to be calculated on the basis of receipts (**actual taxation**) rather than on the basis of agreed charges (**debit taxation**). From 2024, this turnover limit is to be raised to 800,000 euros.

Companies that **invest in climate protection** are to receive an additional 15% of the investment as a bonus until 2027, regardless of their profit. Investments that contribute to a reduction in energy consumption and thus improve environmental and climate protection are to be considered upon application. The eligible investments must be included in an energy or environmental management system or in an energy audit and are thus certified as particularly energy-efficient by an energy consultant. The assessment basis is to be a maximum of 200 million euros in total during the funding period and the investment premium 15% = a maximum of 30 million euros. The subsidy is to be limited to investments that exceed the base amount of 5,000 euros in acquisition or production costs.

A tax allowance of 110 euros per event currently applies to **company events**. From 01.01.2024, this will increase to 150 euros.

In order to increase the attractiveness of the **option for corporate income taxation** pursuant to Sec. 1a KStG, all partnerships are now to be given the opportunity to opt for corporate income taxation (previously only partnerships and partnership companies).

A legal regulation is introduced for the mandatory use of **electronic invoices in the B2B sector**.

#### Note

The Growth Opportunities Act is scheduled for passage in the Bundestag on Nov. 10, 2023, and approval in the Bundesrat on Dec. 15, 2023.

#### New version of the Working Hours Act

In September 2022, the German Federal Labor Court affirmed a general **working time recording obligation for employers** and ruled that employers must immediately document the entire working time of all employees (exception: executive employees) in real-time, regardless of the place of work. Already in 2019, the European Court of Justice ruled that general working time recording obligations exist for employers.

The German Federal Ministry of Labor and Social Affairs plans to introduce a general obligation to record working hours by making comprehensive changes to the Working Hours Act/ArbZG and on April 18, 2023 presented the draft bill for the revision of the Working Hours Act (ArbZG-E). According to Section 16 (2) Sentence 1 ArbZG-E, employers are to be required to record \*electronically\* the beginning, end and duration of employees' daily working hours on the day on which they perform their work (in contrast to the recording obligations under the Minimum Wage Act). The rules are to apply regardless of the place of work, i.e. **in home offices or mobile work**. According to the draft bill, employees may record the time themselves. However, the employer always remains responsible for correct time recording. A **fine of 30,000 euros** has been set. The draft bill does not contain any more specific requirements for electronic recording, but allows other forms of electronic recording in addition to the time recording devices commonly used in practice. Exceptions to the statutory obligation to document working time are to be possible only on the basis of collective bargaining agreements. There are also exemptions for smaller companies and transitional periods.

Irrespective of this, **trust-based working time** is still to be possible according to the draft bill. The obligation to record working time remains in place even if trust-based working time has been agreed.

The recording obligations are to apply immediately upon entry into force of the Amendment Act. However, transitional periods of between two and five years apply to the electronic recording of working hours, depending on the number of employees in the company.

### Note

The draft bill is currently going through the legislative process and is expected to be passed by the end of 2023.

*For income taxpayers*

### Repayment of loans through subsidized capital

If spouses are co-owners of an owner-occupied property and only the husband is the borrower of the loans taken out when the property was acquired, only the spouse as borrower is entitled to withdraw subsidized capital to repay these loans, but not the wife. This was the decision of the Berlin-Brandenburg Tax Court.

This also applies if the wife has assumed joint liability by providing a directly enforceable guarantee in respect of the loans and taking out a land charge to secure the loans on her property.

The fact that the wife was not initially a joint and several debtor cannot be remedied by the subsequent assumption of the debt, which is no longer closely related in time to the taking out of the loan, or by the inclusion of the wife in the loan agreements. In the case in dispute, the plaintiff is not entitled to a preferential withdrawal from her retirement provision agreement.

### Parking space costs deductible in the context of double household management for business purposes

Parking space costs in the context of a double household for work-related reasons also belong to the other (fully deductible) additional expenses according to the new legal version of Section 9 (1) No. 5 EStG. This was the decision of the Lower Saxony Tax Court.

The unchanged reference value is "only" those (accommodation) costs that are usually included in the calculation of the average apartment rent and are thus also covered by the lump sum of 1,000 euros, which is intended to replace the time-consuming calculation of the average rent. These are, in addition to the (basic) rent, the monthly amounts to be spent on water, sewerage, street cleaning, garbage collection, house cleaning and lighting, chimney cleaning, janitor, public charges, building insurance and cable connection. The Income Tax Act does not contain an exemplary or even conclusive list of the accommodation costs covered by

the "settlement effect", nor does it contain a limitation of the (total) costs of the second home to a maximum of 1,000 euros that goes beyond the range of eligible accommodation costs.

### Vacation homes owned by the partners of a GbR and rented out by them themselves are not necessary special business assets

If several persons meet the criteria for generating income in one company, an independent profit assessment notice must be issued for each company even if there are other companies between the same persons. According to the Schleswig-Holstein Tax Court.

In the case in dispute, the vacation homes owned and rented out by the partners themselves do not form part of the special business assets of the partnership under civil law (GbR). The income generated from the rental of the vacation homes, as well as the income generated from the sale of the properties, is not to be allocated to the commercial income of the GbR.

### Tax liability including share losses exceeds annual subsistence level - income taxes to be waived

The levying of income taxes may be objectively inequitable if the tax assessed exceeds the minimum subsistence level to be left tax-free on an annual basis when including share losses that have actually been paid out but cannot be taken into account for tax purposes due to compensation restrictions. This was the decision of the Cologne Tax Court.

The plaintiff suffered losses from option writer transactions. Due to the restriction on offsetting losses under the German Income Tax Act as amended in the year in dispute, around 390,000 euros were not offset against positive income from other types of income. This resulted in a correspondingly higher total amount of income. Taking into account the basic tax-free allowance of EUR 7,235 applicable for 2002, the plaintiff sought a reduction in her total tax burden.

The court ruled in favor of the plaintiff. According to the so-called subjective net principle, the state must leave as much of a taxpayer's income tax-free as is required to cover the necessary subsistence (subsistence minimum). The subsistence level is constitutionally the lower limit for the income tax. With regard to the exemption of the subsistence minimum, no overall assessment over several years is to be made. Rather, the amount of money actually and unavoidably required for subsistence was to be exempted from taxation in each assessment year.

For VAT payers

### Input tax refund in case of missing registration of a VAT identification number in the application possible

According to the Cologne Fiscal Court, the fact that the VAT identification number or tax number of the performing entrepreneur is not entered in the annex to the application for input tax reimbursement does not prevent the reimbursement from being made in this case.

In the case in dispute, the defendant had all the information in the submitted invoices that enabled it to verify the correctness of the asserted input tax refund claim. Against the background of the principle of neutrality of the value added tax, the formal deficiencies complained of by the defendant, considering the case law of the European Court of Justice, do not prevent the taxpayer's input tax refund claim here.

For those subject to inheritance tax/gift tax

### Comparative value method for inheritance and gift tax

The tax offices primarily use the "**comparative value method**" to determine the real estate values relevant for inheritance and gift tax. This method is based on comparative prices or comparative factors from the appraisal committees.

Appeal proceedings are pending before the Federal Fiscal Court. The judges want to comment on the question of whether the comparative prices determined by the appraisal committees and communicated to the tax offices in accordance with the Valuation Act are binding for the parties involved in the tax law relationship and are regularly not amenable to judicial review.

A decision by the Federal Fiscal Court on this issue is in the general interest for reasons of legal certainty, legal uniformity and legal development.

#### Note

Affected taxpayers can appeal against assessment notices in which real property values have been determined by means of comparative prices or comparative factors with reference to the pending proceedings before the German Federal Fiscal Court

(Bundesfinanzhof).  
appeal.

Other

### International financial reconciliation as of 30.09.2023

On September 30, 2023, the **exchange of information between the tax authorities** between 119 states will begin. Via the Federal Central Tax Office (BZSt), the locally competent tax office will then receive account data from member states of the European Union and third countries that have joined the data exchange agreement through automated data exchange. The list of countries is contained in the letter from the Federal Ministry of Finance dated February 23, 2023 (Ref. IV B 6 - S-1315 / 19 / 10030 :051).

If there is an obligation to declare the income resulting from the financial accounts, in particular income from capital assets, but this has not been done, this may result in reckless tax evasion or tax avoidance. However, the exempting effect of the voluntary disclosure will not be effective if the tax offense was discovered. This can be assumed to be the case after the foreign tax authority has notified the BZSt.

Conversely, foreign tax authorities also receive information about financial accounts in Germany via the BZSt. Since the global income principle or the penalty-exempt voluntary disclosure is not unknown in other jurisdictions, taxpayers abroad should (have) their returns verified abroad.

The motives for having a financial account abroad can vary. For example, there are known cases from the pre-BREXIT period of former students who set up an account in the United Kingdom. At the time, British banks generously granted student loans if a bank account existed in the UK. Due to a change in the legal requirements of banking supervision, these accounts are now likely to have been almost completely closed. However, interest income may not have been declared. In this case, a subsequent declaration should be examined.

Also not uncommon are accounts related to foreign real estate.

### **Storms in Bavaria in August 2023: Assistance for affected private households, businesses and municipalities**

According to the Bavarian state government, private individuals and companies can receive tax relief, and it has also been decided to launch a state financial aid campaign. According to this, private households in particular, who are threatened with existential hardship as a result of the severe weather in Bavaria in August 2023, can be granted financial aid in individual cases. Affected municipalities can receive support by way of municipal financial equalization.

Within the framework of tax relief, individuals as well as companies may, in individual cases, in accordance with the relevant regulations, among other things

- Taxes deferred,
- Enforcement measures deferred and
- Tax prepayments are reduced.
- Special depreciation is also possible.

The contact for those affected is the relevant tax office.

### **Commission paid to intermediary in Hong Kong - business expense deduction possible**

The Münster Fiscal Court had to decide whether the deduction of operating expenses for a brokerage commission claimed by the plaintiff in the 2016 year in dispute was to be denied under the Foreign Tax Act or under the German Fiscal Code.

The beneficiary designation (here: by specifying a Hong Kong-based company and its sole shareholder; submission of an annual return; acknowledgement of receipt of the amount paid in cash; foreign remittances to the company) is also proper within the meaning of the tax code if it is ensured that the real beneficiary of a payment (here: in connection with the settlement of the purchase of two machines in China with the assistance of a Hong Kong-based intermediary) is not liable for tax in Germany with a probability bordering on certainty.

For the application of the Tax Code, it is irrelevant whether the calculation parameters for a commission are explained conclusively and are comprehensible in detail for the tax office. An income tax burden of 16.5% is not a merely insignificant taxation within the meaning of the Foreign Tax Act. In the case in dispute, the tax office wrongly refused to deduct an operating expense. As a corporation with unlimited tax liability, the plaintiff does not have any non-operating sphere in accordance with the Corporation Tax Act.

**Dates Taxes/Social Security**
**October/November 2023**

Control type		Maturity	
Wage tax, church tax, solidarity surcharge		10.10.2023 <sup>1</sup>	10.11.2023 <sup>2</sup>
Sales tax		10.10.2023 <sup>3</sup>	10.11.2023 <sup>4</sup>
End of grace period of above tax types when paid by:	Bank transfer <sup>5</sup>	13.10.2023	13.11.2023
	Check <sup>6</sup>	10.10.2023	10.11.2023
Trade tax		not applicable	15.11.2023
Property tax		not applicable	15.11.2023
End of grace period of above tax types when paid by:	Bank transfer <sup>5</sup>	not applicable	20.11.2023
	Check <sup>6</sup>	not applicable	15.11.2023
Social security <sup>7</sup>		10/26 <sup>8</sup> /10/27/2023	28.11.2023
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 previous 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 24.10.<sup>8</sup> /25.10.2023/24.11.2023, 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.

**Imprint**

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