

Good morning and welcome to the news from the world of tax.

Until now, the tax authorities have refused to grant tax relief for winter maintenance and snow-clearing costs relating to public footpaths because the services are not carried out on private property. This view contradicts Supreme Court rulings.

According to a ruling by the Federal Fiscal Court, there are no high requirements for the form of a child benefit application, as child benefit serves to safeguard the principle of tax exemption of the minimum subsistence level and to promote the family.

According to the Hamburg Fiscal Court, the tax authority's request to submit an overall journal, in which emails that are not subject to retention are also to be listed or presented following the tax authority's specifications, exceeds the tax authority's powers and is therefore unlawful.

Employees are obliged to inform themselves about changes to the work schedule in their free time or to accept instructions from the employer to specify working hours, e.g. by text message.

The draft bill for the Bureaucracy Relief Act IV has been published. Among other things, it contains a reduction in the retention periods for accounting documents under commercial and tax law from ten to eight years.

Do you have any questions about the articles in this issue of Monthly Information or other topics? Please do not hesitate to contact us.

We will be happy to advise you.

*For income taxpayers*

### Winter maintenance on public footpaths deductible as a household-related service

In many cities and municipalities, homeowners are obliged to keep sidewalks free of snow and ice in winter. Until now, the tax authorities have refused to grant tax relief for winter maintenance and snow-clearing costs relating to public sidewalks because the services are not carried out on private property. This view contradicts Supreme Court rulings.



With the BMF letter dated 01.09.2021, the tax authorities have complied with a claim for tax relief for expenses incurred by a taxpayer for winter road maintenance on public footpaths. Both street cleaning and winter maintenance on footpaths are eligible as household-related services. The general requirement here is also that the service is comparable to that of household help. Furthermore, the tax authorities do not consider snow-clearing costs for roadways bordering the property to be a household-related service.

This means that for services in a private household, taxpayers can apply for a tax reduction of 20 % of 20%, up to a maximum of 4,000 euros, per calendar year for their expenses. This reduction amount is deducted directly from the income tax payable following Section 35a EStG. However, material costs for the gritting material must be borne by the customer; only labor, machine and travel costs are deductible. For the tax office to recognize the costs, the individual items must be shown separately on the invoice.

The tax reductions can be claimed in the respective year of payment. Further requirements for claiming the tax reduction are that the payment is made non-cash and that the non-cash payment is proven through transfer receipts.

### Proof of a main household in the case of dual household management

A double household can also be established for professional reasons if a taxpayer moves their previous main residence away from their place of employment for private reasons and then establishes a second household in the home, they have kept there to pursue their previous employment from there. This was decided by the Cologne Tax Court.

The court goes on to say, among other things: The taxpayer's center of life must be in the home in which the main household is run, whereby the taxpayer essentially only spends time there interrupted by work and holiday-related absences. Whether the employee's home outside the place of employment is the center of his or her life must be determined based on an overall assessment of all the circumstances of the individual case. In the case of a married employee, the center of life is generally at the place where the spouse also lives.

### Child benefit application by e-mail

There was a dispute between the parties as to whether the Rhineland-Palatinate tax court was right to oblige the family benefits office to pay child benefits to the claimant for her two children for May 2018 up to and including April 2019. This crucially depended on whether an application for child benefit on 16/07/2019 could also be submitted in a formally effective manner by email, because before 18/07/2019 the entitlement to child benefit and after 18/07/2019 the entitlement to payment of child benefit was limited to the last six calendar months before the beginning of the month in which the application for child benefit was received.

According to a ruling by the Federal Fiscal Court, the form of an application for child benefit is not subject to strict requirements, as child benefit serves to uphold the principle of tax exemption of the minimum subsistence level and to promote the family. The court also states that the term "in writing", as used in the Income Tax Act, does not automatically imply a signature requirement within the meaning of the German Civil Code.

*For VAT payers*

### No input tax deduction for a managing holding company

According to the European Court of Justice, a holding company is not entitled to deduct input VAT for input supplies that it makes to its subsidiaries as a shareholder contribution (free shareholder contribution). Instead, the right to deduct input VAT presupposes that the purchased input supplies are directly and immediately related to the holding company's own (taxable) output transactions or the overall economic activity of the holding company.

The Federal Fiscal Court followed this view in its subsequent decision.

### Note

As a result of the Federal Fiscal Court's case law, the following applies:

A holding company is to be denied input tax deduction for input supplies if:

- are not directly and immediately related to taxable services provided by the holding company, but to free services owed by it as a shareholder contribution,
- are not directly and immediately related to the holding company's own sales, but to the sales of third parties (the subsidiaries),
- are not included in the price of the taxable sales made to the subsidiaries and
- are not part of the general cost elements of the holding company's own economic activity.

### Objection to a credit note - revocation of the waiver of tax exemption after spin-off

The Federal Fiscal Court had to decide whether revocation declarations by suppliers could be interpreted as a reversal of the waiver of tax exemption. Regarding the input tax deduction from revoked credit notes, it appeared questionable whether the objections of suppliers to credit notes due to a previous spin-off following the German Reorganization Act (Umwandlungsgesetz) had no tax effect for the plaintiff, but only for the acquiring company.

Once a spin-off has been entered in the commercial register, any objection to a credit note based on a contract covered by the spin-off must be declared to the acquiring legal entity. If an entrepreneur waives the tax exemption of a transaction by invoicing the recipient of the transaction with a separate statement of VAT, the entrepreneur can only reverse the waiver by issuing a corrected invoice without VAT to the acquiring legal entity as the recipient of the service.

*Procedural law*

### Submission of e-mail correspondence or a complete journal - Powers of the tax authorities

As part of an external audit, the tax office requested that the plaintiff submit received and reproductions of sent commercial letters in accordance with Section 147 (1) No. 2 and 3 of the German Fiscal Code (AO) as well as other documents relevant to taxation following

Section 147 (1) No. 5 AO and, if the requested documents were available in electronic form, an overall journal in which all emails should be recorded.

The Hamburg Fiscal Court ruled that the powers under Section 147 (6) AO are only available to the tax authorities concerning documents that the taxpayer is required to retain following Section 147 (1) AO. Commercial letters within the meaning of Section 147 (1) nos. 2 and 3 AO in conjunction with Sections 257 (2) and 343 HGB are not restricted to a specific form, meaning that emails can also be commercial letters. Documents relate to a commercial transaction if they concern its preparation, execution or rescission. The performance transactions to be carried out within the framework of a contractual relationship, which in turn qualifies as a commercial transaction, such as the provision of information or services, relate to the execution of this commercial transaction and also qualify as commercial transactions. If such performance transactions are embodied in a document, these are subject to the retention obligation according to Section 147 (1) nos. 2 and 3 AO.

The tax authorities are not entitled to demand the submission of a complete electronic journal which, according to the tax authorities' specifications, should contain information on every single email received or sent by the taxpayer. The request to submit a complete journal, in which emails that are not subject to retention according to Section 147 (1) AO are also to be listed or presented following the requirements of the tax authorities, exceeds the powers of the tax authorities under Section 147 (6) AO and is therefore unlawful. A generally formulated request for the submission of electronic documents "en bloc" can, taking into account the taxpayer's right of first qualification, both satisfy the requirement of certainty and be covered by the tax authorities' right of data access according to Section 147 (6) AO and be proportionate.

*Labor law*

### Employees must take note of roster instructions for the following day in their free time

Employees can be expected to read a text message from their employer about the start of their previously scheduled work shift in their free time. If a company agreement stipulates that standby duties for an emergency paramedic are to be instructed by the employer one day in advance at a specific time, the employee may not ignore such a text message. This was decided by the Federal Labor Court.

In this specific case, an emergency paramedic took legal action against his employer. The employer had failed to contact him on two occasions by telephone and text message and in one case also by email to inform him that the duty roster had been changed and that he should arrive earlier. The emergency paramedic did not take note of the messages and therefore did not arrive until the originally planned start of his shift. However, the employer considered the alleged late arrival to be an unexcused absence and deducted a credit from his working time account and issued him first a warning and then a reprimand.

*Civil law*

### Spouses can no longer challenge a combined marriage and inheritance contract that has been placed in safe keeping

An inheritance contract that only contains dispositions upon death can later be demanded to be removed from official custody. According to the Higher Regional Court of Frankfurt am Main, this is not possible if a marriage contract is combined with the inheritance contract - even if the combined contract was later annulled.

In the dispute case, a married couple concluded a notarized contract in 2011 in which they amended their marriage contract from 1988 and at the same time drew up an inheritance contract. They placed the contractual document in official safekeeping. In 2018, the couple drew up a joint will by notarial deed and revoked the inheritance agreement notarized in 2011. However, the marriage contract from 2011 was not to change. They also placed this deed in official safekeeping. In 2018 and 2019, the couple unsuccessfully requested the surrender of the deeds. They then revoked the contracts from 2011 and 2018 with a notarial deed from 2022 and again applied for the return of the deeds. Both applications were rejected by the probate court. The couple's appeal before the Higher Regional Court was only successful concerning the return of the joint will.

### Termination for personal use due to use of the apartment building as a single-family home

If there are several apartments in a residential building and the owner wishes to use the building as a single-family home in the future, the corresponding notices of termination for personal use are invalid if there is no building permit for the conversion. This constitutes an inadmissible preliminary termination. This was the

decision of the Hamburg district court.

*Miscellaneous*

### Germany ticket

The Federal Ministry of Finance has now clarified that if a travel authorization for local public transport is also approved for the use of certain long-distance trains, this still constitutes a journey on local public transport within the meaning of the Income Tax Act.

#### Note

As a result, the Deutschlandticket was also released for certain Intercity and ICE connections.

### Claiming an unpaid energy price allowance at the tax court

The tax courts are responsible for complaints regarding the energy price lump sum to be paid out for 2022. However, the tax office and not the employer must be sued. This was decided by the Münster Fiscal Court.

The applicant had sued his employer at the Münster Fiscal Court for payment of the energy price allowance of EUR 300 and applied for legal aid for the legal proceedings.

The court rejected this application. There is no legal interest in claiming against the employer because it is not the debtor of the energy price lump sum. By paying out this lump sum, employers do not fulfill their employees' wage claims but act as a paying agent for the state. The energy price lump sum is a tax refund that must be claimed from the tax office by submitting an income tax return. A reinterpretation of the claim to the effect that the tax office should be the defendant is not possible because of the clear designation of the employer. Such an action would also not be admissible without preliminary proceedings.

*Legislation*

### Bureaucracy Relief Act IV (BEG IV)

On 11.01.2024, the draft bill for the Bureaucracy Relief Act IV (BEG IV) announced in the coalition agreement was published. Concerning the economy, the draft essentially contains relief that can be attributed to three measures:

- Shortening the retention periods for accounting

documents under commercial and tax law from ten to eight years (e.g. copies of invoices, account statements and payrolls).

- Cancellation of written form requirements or their downgrading to text form following Section 126b BGB (e.g. no written form requirement for commercial leases).
- In future, German nationals will no longer be required to register as hotel guests.

The economy is to be relieved to the tune of 680 million euros annually. 595 million of this relief alone results from the shortened retention periods. At the same time, the federal government is addressing the risk of an annual tax loss of 200 million euros, as it would no longer be possible to successfully prove evasion after nine or ten years without accounting documents.

In terms of content and concerning the expected monetary relief, the draft falls short of expectations. For example, BEG IV does not address the planned introduction of a power of attorney database for social insurance law. This topic could still be taken up in the legislative process that is now underway. Parallel to BEG IV, there are other legislative procedures on the agenda that are aimed at reducing bureaucracy for citizens and businesses (Growth Opportunities Act and the early application of the increased thresholds for determining the size categories for companies with limited liability to the 2023 financial year).

### "Second Budget Financing Act" passed by the Federal Cabinet

On January 8, 2024, the federal government launched the "Second Budget Financing Act". It contains the following provisions:

- The current rates of air traffic tax will be increased as of 01.05.2024.
- The revenue from the offshore tenders in 2023 will be used more broadly. A Portion will go to the federal budget.
- The tax concession for agricultural diesel will gradually decrease from March 1, 2024 and will cease completely from 2026.
- In the basic income support scheme, regulations are being tightened for those jobseekers who deliberately refuse to take up reasonable work.
- The citizen's income bonus will be abolished, while the financial incentives for vocational qualification-related further training through the further training allowance and the further training premium will be retained.

The federal government intends to introduce further measures that do not require legislative amendments directly into the parliamentary deliberations on the 2024 federal budget.

The 2024 budget is expected to provide citizens with relief totaling 15 billion euros. The **second stage of the Inflation Adjustment Act** has been in force since the beginning of the year. This increases the tax-free allowances for adults and children and adjusts the income tax rate to inflation.

Following further deliberations, the 2024 federal budget is expected to be adopted in the second week of the Bundestag session at the end of January 2024 according to these plans. The Bundesrat could then conclude the legislative process in its meeting on 02.02.2024.

## Tax/social security dates

February/March 2024

Tax type		Maturity	
Income tax, church tax, solidarity surcharge		12.02.2024 <sup>1</sup>	11.03.2024 <sup>1</sup>
Income tax, church tax, Solidarity surcharge		Not applicable	11.03.2024
Corporation tax, solidarity surcharge		Not applicable	11.03.2024
Value added tax		12.02.2024 <sup>2</sup>	11.03.2024 <sup>3</sup>
Value added tax special advance payment		12.02.2024	Not applicable
End of the grace period for the above types of tax in the event of payment by:	Bank transfer <sup>4</sup>	15.02.2024	14.03.2024
	Check <sup>5</sup>	12.02.2024	11.03.2024
Trade tax		15.02.2024	Not applicable
Property tax		15.02.2024	Not applicable
End of the grace period for the above types of tax in the event of payment by:	Bank transfer <sup>4</sup>	19.02.2024	Not applicable
	Check <sup>5</sup>	15.02.2024	Not applicable
Social insurance <sup>6</sup>		27.02.2024	26.03.2024
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge payable on it must be paid to the relevant tax office at the same time as the profit distribution to the shareholder.	

- 1 For the past month.
- 2 For the past month, for the month before last in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers with a permanent extension.
- 3 For the previous month, for the month before last in the case of a permanent extension.
- 4 Advance VAT returns and income tax returns must generally 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 payment surcharges will be levied if payment is up to three days late. A bank transfer must be made in good time so that the value date on the tax office's account is on the due date.
- 5 When paying by check, please note that the payment is not deemed to have been made until three days after receipt of the check by the tax office. A direct debit authorization should be issued instead.
- 6 Social security contributions are due on the third-last bank working day of the current month. The direct debit procedure is recommended to avoid late payment penalties. All health insurance funds have a standard deadline for submitting contribution statements. These must be received by the respective collection agency no later than two working days before the due date (i.e. on 23.02.2024/22.03.2024, 0 a.m. in each case). Regional peculiarities regarding due dates may need to be taken into account. If payroll accounting is carried out by external contractors, the wage and salary data should be sent to the contractor around 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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