

Monthly information

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solvetaX
solutions for your tax

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How do you do?

In its meeting on 22.03.2024, the Federal Council approved the Growth Opportunities Act, thus confirming the compromise proposal of the Mediation Committee of the Bundestag and Bundesrat of 21.02.2024. In this issue, you can read a summary of the most important provisions of the Growth Opportunities Act.

The Lower Saxony Tax Court addressed whether an influencer can claim expenses for the purchase of civilian clothing and fashion accessories for tax purposes.

The Düsseldorf Fiscal Court has commented on the requirements for a properly maintained electronic logbook - in particular the requirements of the "external closed form" and the concept of "timely" maintenance.

The Berlin-Brandenburg Fiscal Court decided whether expenses incurred by a GmbH for a TV subscription and a classic car used privately by its shareholder-managing director constituted a hidden profit distribution.

In October 2023, the European Commission initiated an increase in the thresholds for determining the size classes of companies and groups. The regulation came into force in December 2023. The Federal Ministry of Justice now has the task of implementing it.

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.

Growth Opportunities Act

Federal Council approves Growth Opportunities Act

In its meeting on 22.03.2024, the Federal Council approved the Growth Opportunities Act and thus confirmed the compromise proposal of the Mediation Committee of the Bundestag and Bundesrat of 21.02.2024.

Numerous changes were made to the law at the suggestion of the Mediation Committee. The planned climate protection investment premium is no longer part of the Growth Opportunities Act.

The tax investment incentives are intended to strengthen Germany's competitiveness as a business location and the amended version of the law is expected to lead to annual tax relief of EUR 3.2 billion.

Now that the Bundestag and Bundesrat have approved the Mediation Committee's proposed amendment, it can enter into force once it has been drawn up and promulgated.

Summarized overview of the most important provisions of the Growth Opportunities Act (WCG):

- **Date of introduction of e-invoicing on 01.01.2025**, general transition period until 31.12.2026, transition period for small companies until 31.12.2027
- **E-invoice formats:** In addition to X-Invoice/ZUGFeRD, EDI formats are also permitted, provided that the data can be extracted in accordance with Directive 2014/55/EU of 16.04.2014
- **Degrassive depreciation for residential buildings 5%** with start of construction from 01.10.2023 limited to 6 years (= up to and including 30.09.2029)
- **Degrassive depreciation for movable assets** limited to the period from 01.04.2024 to 31.12.2024 and limited to a maximum of 2 times the straight-line depreciation and 20%
- **Increase in the minimum taxation threshold for loss carryforwards** to 70% for four years (=AY 2024 to 2027)

- **Special depreciation for companies** with profits of up to EUR 200,000 in the previous year amounting to 40% of the investment costs from acquisition 01.01.2024
- **Increase lump sum for professional drivers** to 9 euros from FY 2024
- **Increase in deduction limit for gifts** to 50 euros from 01.01.2024
- **Increase in gross list price for e-vehicles** to 70,000 euros, purchase from 01.01.2024
- **Valuation of contribution of young assets** with (amortized) depreciation only in the case of origin from private assets from FY 2024
- **Increase in exemption limit for private sales transactions** to EUR 1,000 from 01.01.2024
- **Improvement of retention benefit**
- **Abolition of fifths rule** from FY 2025
- Further regulations on the **Beneficiary Register**, applicable from the day after the promulgation of the WCG
- **Corporate income tax option**, applicable from the day after the promulgation of the WCG
- **VAT exemption for guardians ad litem** and **guardians ad litem** from 01.04.2024
- **Clarifying wording** that sec. 12 para. 2 no. 8a sentence 3 UStG only applies to **services provided by special-purpose entities** in accordance with sec. 66 to 68 AO applies from the day after the promulgation of the WCG
- **Increase in VAT actual taxation limit** to 800,000 euros, from 01.01.2024
- **Increase in accounting obligation limit** (profit EUR 80,000, turnover EUR 800,000), applies to the financial year starting from 01.01.2024
- **Increase in the retention obligation limit for surplus income** to 750,000 euros from the 2027 tax year
- **Increase in threshold value for quarterly VAT** to 2,000 euros, from FY 2025
- **Abolition of the obligation to submit annual VAT returns for small businesses** from FY 2024
- **Improvements to the Research Allowances Act**, including a maximum assessment basis of EUR 10 million, applicable from the day after the promulgation of the WCG

- **Regulations on the digital procedure for determining the number of children in social long-term care insurance contribution law** (with consequential changes to the wage tax deduction procedure) introduced, from 01.01.2024
- **Simplification of taxation in "foreign home office cases"**, from 01.01.2024

Already published in advance in the Secondary Credit Market Act and already in force:

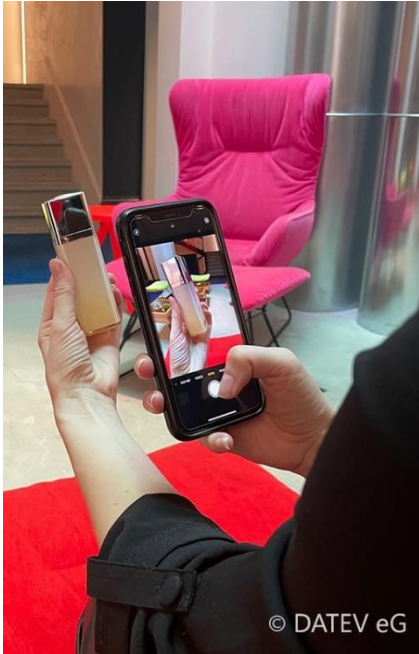
- Necessary changes in connection with the MoPeG
- Interest barrier
- Data exchange between private health and long-term care insurance companies, the tax authorities and employers
- Employee pension lump sum in the wage tax deduction procedure
- No taxation of December aid, repeal of Sections 123 to 126 EStG

Measures canceled in advance by the Mediation Committee:

- Introduction of the Climate Protection Investment Premium Act
- Introduction of mandatory reporting of domestic tax arrangements
- Exemption limit Income from letting and leasing 1,000 euros
- Increase in GWG limit to 1,000 euros
- Reduction in reversal period for collective items to 3 years, increase in value limit to EUR 5,000
- Increase in flat-rate additional meal expenses to 30 or 15 euros
- Increase in tax-free amount for company events to 150 euros
- Increase in funding for energy-efficient refurbishment measures
- Extended loss carryback
- Extended loss carryforward
- Range alternative hybrid vehicles
- Reduction in average tax rate LuF from 9.0 % to 8.4
- Early expiry of the temporary reduced VAT rate for gas and heat supplies on 29.02.2024 instead of 31.03.2024

For income taxpayers

Expenses for clothing and fashion accessories of an influencer are not business expenses



An influencer ran a fashion and lifestyle blog on various social media channels and via a website and created photos and stories for this purpose. In addition to the products, she received from various companies to promote her work, she purchased various items of clothing and accessories, such as handbags from well-known brands. She claimed the expenses for these items of clothing and accessories as business expenses for her commercial activity as an influencer. The tax office denied the deduction of business expenses on the grounds that all items could also be used privately by the influencer and that it was not possible to distinguish between the private and business spheres. In particular, she had not explained the extent to which she had used the items of clothing and accessories for private or business purposes.

The appeal against this was unsuccessful before the Lower Saxony Tax Court. It is not possible to distinguish between the private and business spheres in the case of ordinary middle-class clothing and fashion accessories. The obvious possibility of private use of ordinary clothing and fashion accessories alone means that they cannot be taken into account for tax purposes. Furthermore, the items purchased are not typical work clothing for which a business expense deduction is possible.

No double housekeeping if travel time between main residence and place of work is around one hour

A managing director was employed by an employer located approximately 30 km away and rented a second home approximately 1 km away from his primary place of work.

The Münster Fiscal Court ruled in favor of the tax authorities to not take into account additional income-related expenses for the claimed double housekeeping in the income from the employment of a plaintiff managing director. The location of the plaintiff's household and the place of employment do not differ in the case in dispute, as the plaintiff can reach his first place of work from his household, which is approx. 30 km away, by car within 50 to 55 minutes in commuter traffic according to the Google Maps route planner. Since the usual travel times are decisive, the fact that, according to the plaintiff, the travel time should have taken longer in individual cases due to construction sites should not be considered. Outside of rush hour traffic, the travel time according to Google Maps is only approx. 30 minutes.

The fact that, according to Google Maps, this route takes an average of approx. 1.5 hours (including walking to the bus stop and transfer and waiting times) when using public transport (two hours according to the plaintiff) is irrelevant because the plaintiff has not clearly demonstrated that he would have traveled the route by public transport if he had driven it every working day. In the year in dispute, the plaintiff made all journeys between his homes as well as all journeys between his home and his place of work by car.

Properly maintained electronic logbook: requirement of "external closed form" and "timely" maintenance

The Düsseldorf Tax Court has determined that a logbook generated with the help of a computer program only has an **external closed form** if subsequent changes to the data entered at an earlier point in time are technically impossible according to the functionality of the program used or are documented or disclosed in their scope in the file itself and are already recognizable upon normal inspection of the electronic logbook. All necessary information must be contained in the logbook itself; a reference to supplementary documents is only permissible if this does not impair the closed character of the logbook records.

The tax court further states that the records are kept **in real time** if the user of the vehicle makes the entries following the relevant journeys. It is not possible to determine when the entries were made in the case in question due to the lack of log files. Whether this circumstance alone is sufficient to deny the regularity of the logbook does not require a final decision. This is because the plaintiff itself has conceded that the entries in the

electronic logbook were made in bundles - usually after each refueling process - and that the journeys are merely recorded on notes in the meantime. Apart from the fact that these original records were destroyed and, as a result, it is not possible to determine whether the notes contained all the information required for proper logbook management (including mileage at the beginning and end of the journey, destination and purpose of the journey), the bundled entry of journeys over several days or even weeks does not meet the requirements for a proper logbook. Even according to the plaintiff's own submission, the entries were only made irregularly, whereby - based on the dates of the refueling processes - there could also be two or more weeks between individual entries. With such intervals, it is no longer guaranteed that all journeys are correctly recorded. This applies all the more in the case in dispute because only "notes" are said to have been kept in between and there is always a risk of these being lost with loose notes.

No entitlement to lump-sum care allowance for only minor care services

A son visited his mother in need of care (care level III) five times a year for several days in an assisted living facility and during this time helped with personal hygiene, dressing and undressing, meals and leaving the apartment. He also supported his mother in organizational matters. The tax office denied a lump-sum care allowance of EUR 1,100 because the care did not go beyond what is usual for family visits.

The Saxon tax court ruled in favor of the tax office: In order to claim the lump-sum care allowance in accordance with Section 33b (6) EStG, the duration of care must be at least 10% of the time spent providing care in order to justify a deduction as an extraordinary burden. Otherwise, in many cases, family visits involving assistance in the household could be taken into account as an extraordinary burden. This was not the intention of the legislator.

For VAT payers

Allocation decision for input tax deduction from the purchase of a photovoltaic system

A taxable person has sufficiently documented his decision to allocate the photovoltaic system to business assets by claiming the input tax deduction in his submitted VAT return.

This was decided by the Cologne Fiscal Court. This is because the assertion of the input tax deduction is a weighty - and also sufficient - indication that an item is part of the company's assets. This is not precluded by the fact that the taxable person has not submitted any advance VAT returns. The allocation decision is deemed to have been **documented "promptly"** if it was made by the statutory submission deadline for tax returns. The relevant submission deadline for advised taxpayers is also decisive for the documentation of the allocation decision.

For inheritance taxpayers

The effects of a "Berlin will" in inheritance tax law

The so-called **Berlin will is** a testamentary arrangement in which spouses appoint each other as heirs and the joint children only become heirs after the death of the last deceased. This quite common testamentary method primarily favors the respective spouse financially and refers children to the generosity of the first surviving parent through possible gifts. In many cases, however, this favors the tax authorities with a higher inheritance tax. If assets are inherited within the immediate family, the allowances to which the children are entitled (400,000 euros per child) are not used in the first death and there may also be a higher inheritance tax due to a higher tax rate.

Example 1:

Assuming assets of EUR 2 million for the husband and EUR 0.5 million for the wife in an inheritance case, as well as separation of property, inheritance tax of 19% on EUR 1.5 million = EUR 285,000 is payable on the death of the husband. If the wife dies and the assets remain unchanged apart from the inheritance tax payment, a further 19% of EUR 707,500 = EUR 134,425 is payable per child. If this death occurs within e.g. 5 years of the husband's death, the share of the assets originating from the father is inherited several times and the children are entitled to a reduction of 30% of the tax due on these assets = around EUR 36,400 (Section 27 ErbStG). This means that a total of EUR 482,050 is payable for the inheritance.

Example 2:

In the case of equal assets and statutory succession (in the first inheritance case: wife and children 1/3 each) and the death of the couple also within 5 years, all allowances can be utilized and the total tax reduced to EUR 105,000. However, the tax burden can also be significantly reduced by leaving the children a legacy of 400,000 euros each in the first case of death, by the children claiming the compulsory portion after their father, possibly limited to the amount of the tax-free amount, or by the children being granted a gift of 400,000 euros from their father. In these variations, the total tax is reduced to 220,000 euros. The limitation period of 3 years (pursuant to § 2332 BGB) must be observed when claiming the compulsory portion.

Labor law

Evidential value of certificates of incapacity for work

The Federal Labor Court has ruled that the probative value of (subsequent) certificates of certificates of incapacity for work may be shaken if the employee who is unable to work submits one or more follow-up certificates after receiving notice of termination that precisely cover the duration of the notice period and takes up new employment immediately after the termination of the employment relationship.

Legislation

Classification of companies into size classes based on the new thresholds

With an amendment proposal dated 22.12.2023, the Federal Ministry of Justice (BMJ) submits to the Bundestag a draft law on the introduction of a leading decision procedure at the Federal Court of Justice to the Federal Government's draft law. What is **remarkable** about this proposed amendment is the justification for Article 7 (Amendment of the German Commercial Code). The **thresholds** proposed to be raised are at the transitions from micro-corporations to small corporations, from small corporations to medium-sized corporations and from medium-sized corporations to large corporations. They also relate to the size-dependent exemption of a parent company from the **obligation to** prepare consolidated financial statements and a group management report. In addition to corporations, the thresholds also apply to **commercial partnerships with limited liability** (Section 264a (1) HGB) and **cooperatives** (Section 336 (2) sentence 1 no. 2 HGB).

The classification of companies into size classes based on the new thresholds must always be based on two consecutive financial years. In the cases of section 267 (1) and (2) and section 267a HGB-E, this results from the directly or correspondingly applicable provision of section 267 (4) HGB and, in the cases of section 293 (1) sentence 1 HGB-E, from its wording ("on the balance sheet date ... and on the previous balance sheet date"). This means that the balance sheet total and sales revenue not only of the financial year

whose annual and consolidated financial statements, management reports and group management reports are concerned, but at least also of the previous year must be taken into account for the classification. In line with the practice of previous increases in the threshold values, the new threshold values are applied retrospectively. A corporation would therefore also be considered small on the reporting date of December 31, 2024 if it did not exceed two of the three characteristics of Section 267 (1) HGB-E in the amended version (balance sheet total EUR 7,500,000, sales revenue EUR 15,000,000, 50 employees on an annual average) on this reporting date and on December 31, 2023 or on December 31, 2023 and on December 31, 2022.

The question remains as to how to proceed for the audit of the thresholds for the financial statements as at 31.12.2022. If the new requirements in the audit already apply to the reporting date of 31.12.2022, the new thresholds would also have to apply to the audit of the reporting date of 31.12.2022, i.e. also to 31.12.2021 and 31.12.2020. If these requirements were met, a corporation as at 31.12.2022, for example, would still be classified as a small corporation under the old thresholds.

The answer to this question is still pending, as this is of great relevance for many companies, as there is then no obligation to audit.

Government draft of the Fourth Bureaucracy Relief Act (BEG IV) published

Following the meeting of the Federal Cabinet on March 13, 2024, the government draft (RegE) of BEG IV was published. Compared to the draft bill (RefE), the potential relief provided by the draft bill has increased:

- For citizens: EUR 3.7 million (previously EUR 3.5 million).
- For the economy: EUR 944.4 million (previously EUR 682 million).
- For administration: EUR 73.7 million (previously EUR 33.9 million).

A large part of the additional relief is due to social security regulations.

Other relevant points from the RegE are:

- No change in the retention periods compared to the RefE: further reduction from 10 to 8 years for accounting documents and invoices, but still without extension to other (criminal tax law) standards or synchronization of all retention periods.

- Increase in the threshold for monthly advance VAT returns from the previous EUR 7,500 to EUR 9,000 to relieve entrepreneurs of bureaucratic costs from 01.01.2025.
- Change in the issuance of an employment reference compared to the RefE: Instead of the planned unrestricted deletion of the prohibition of issuance in electronic form, electronic form is now only permitted with the consent of the obligated party and the employee.
- In future, text form (previously written form with signature) will be sufficient for an employee to announce their intention to take care leave or family care leave.

An exact timetable for the further legislative process is not yet known.

New legal regulations in April 2024

From April 2024, the VAT on **gas and district heating, which** was temporarily reduced to seven percent, will rise again to the **normal 19 percent**. The electricity and gas price brake had already been abolished as of 01.01.2024.

Previously, the **income threshold** for entitlement to **parental allowance was** 300,000 euros taxable income for married couples. For children born after 01.04.2024, the income limit will fall to **200,000 euros**. According to the Federal Ministry for Family Affairs, this limit is also planned for **single parents** (previously 250,000 euros). From April 2025, the income limit for couples and single parents is to be further reduced to 175,000 euros.

The **qualification allowance** is a **new subsidy** that employers can apply for immediately for employees. However, it will be available from 01.04.2024 at the earliest.

Imprint

The contents have been compiled with the utmost care, do not claim to be complete and are no substitute for examination and advice in individual cases.

Tax/social security dates April/May

2024

Tax type		Maturity	
Income tax, church tax, solidarity surcharge		10.04.2024 ¹	10.05.2024 ²
Value added tax		10.04.2024 ³	10.05.2024 ⁴
End of the grace period for the above types of tax in the event of payment by:	Bank transfer ⁵	15.04.2024	13.05.2024
	Check ⁶	10.04.2024	10.05.2024
Trade tax		Not applicable	15.05.2024
Property tax		Not applicable	15.05.2024
End of the grace period for the above types of tax in the event of payment by:	Bank transfer ⁵	Not applicable	21.05.2024
	Check ⁶	Not applicable	15.05.2024
Social insurance ⁷		26.04.2024	28.05. ⁸ /29.05.2024
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, for quarterly payers for the past calendar quarter.

² For the past month.

³ For the past month, for the penultimate month in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers without a permanent extension.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Social security contributions are due on the third-last bank working day of the current month. To avoid late payment penalties, it is advisable to use the direct debit procedure. 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 24.04.2024/25.05.⁸ /27.05.2024, 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.

⁸ Applies to federal states in which Corpus Christi is a public holiday.