Monthly information

June 2024

solvetax
solutions for your tax

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Welcome back to the monthly world of taxes and finance,

The Federal Fiscal Court examined how income tax is to be calculated on a flat-rate basis for a VIP box that has been rented without hospitality services and with limited advertising opportunities.

The Münster Fiscal Court ruled that the flat-rate energy allowance paid to employees in 2022 is taxable income from employment.

Is beer tax to be levied on beer produced by a hobby brewer that he offers for tasting free of charge? The Düsseldorf Fiscal Court had to decide this question.

There are always many questions in employment law, including what justifies dismissals. For example, anyone who posts pictures of their workplace on social networks without permission may face dismissal. The Saxon State Labor Court decided this.

In the opinion of the Cologne Labor Court, terminating a severely disabled employee with notice during the probationary period can be discriminatory in the sense of disadvantage due to disability and therefore invalid if the employer has not carried out the prevention procedure.

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

Multiple utilization of the maximum amount for investment deductions

The plaintiff operated a wholesale business with used materials and inherited a scrap metal business. He applied for investment deductions to both companies, exceeding the maximum of EUR 200,000. However, the defendant's tax office only considered the maximum amount. The plaintiff believed that there were two independent businesses. Accordingly, two maximum amounts were to be considered.

The action was unsuccessful before the Düsseldorf Tax Court. It is a single business operation based on geographical proximity, similar activities, and organizational connection. The personal motivation of the plaintiff to separate the businesses is not decisive. The ruling is not final.

Note

It is worth noting that in cases of business splits, according to the ruling of the Federal Fiscal Court of 17.07.1991, the holding company and the operating company are to be assessed separately when examining the profit limit of § 7g para. 1 sentence 2 no. 1 letter b EStG. The same applies to tax groups. Until the decision of the Federal Fiscal Court in the present case, it remains exciting.

Lump-sum payment of benefits in kind for VIP boxes

From 2012 to 2014, a company rented a VIP box with 12 seats in a multi-purpose hall for EUR 127,000-130,000 per year, which was used for sporting events and concerts, among other things. The rental did not include any catering services. In addition, the company was only permitted to carry out advertising and sponsorship activities within the VIP box. Only the company's logo and lettering were displayed around the box. The company invited business partners and employees to correspond events in the VIP box. The employees were responsible for looking after the business partners. The company divided the expenses for the VIP box into a 57% share for advertising (40% + 17%) and a 43% share for gifts (30% + 13%) following the so-called VIP box decree of the Federal Ministry of Finance and paid flat-rate income tax on the latter share. The company divided the 30% share for entertainment costs provided for in the decree between advertising and gifts in a ratio of 4:3. The defendant tax office believed that an estimated share of 75% was attributable to gifts and only 25% to advertising, so that it demanded additional flat-rate income tax for the gift portion. The company appealed against this apportionment.

According to the Federal Fiscal Court, the free provision of seats in a VIP box to business partners and employees is a benefit in kind that can be taxed at a flat rate. The object of the benefit in kind is the provision of the individual box seat; empty seats are not to be considered: The expenses for the seats provided can be determined through an appropriate estimate. The same applies to the advertising share attributable to the benefit.

Profit from the sale of an employee shareholding at normal market conditions does not constitute income taxable wages

The profit (difference between the [re]purchase price and acquisition costs) from the sale of an employee shareholding at normal market conditions is not a benefit subject to income tax, even if the employee previously acquired the shareholding from his employer at a reduced price. The Federal Fiscal Court decided this.

Benefits granted by third parties, insofar as these are caused by the employment relationship, can also lead to wages. However, if the benefit granted is based on other (special) legal relationships, the assumption of wages is ruled out. In the present case, it was not disputed that the plaintiff had only been offered the participation based on his employment relationship. However, a benefit leading to taxable wages could only be affirmed to the extent that the shareholding had been granted at a reduced price.

Only if the employees had been granted an above-market price concerning the third-party investors would there have been taxable wages in the amount of the above-market price. However, this was not to be assumed in the case of the plaintiff. In the opinion of the tax office, the capital gain in 2007 was not covered by any other taxable event, meaning that the gain was tax-free.

Note

From 2018, such disposal proceeds will be taxed as income from capital assets; however, only at the special tax rate of 25%. This limits the attractiveness of such participation models, but does not make them any less attractive given the regularly higher individual tax rate for employees at management level who participate in such arrangements.

Late lump-sum taxation can be expensive

Expenses of more than 110 euros per employee for a company anniversary celebration are subject to social security contributions as a non-cash benefit if they are not taxed as a lump sum with the pay slip, but only considerably later. The Federal Social Court ruled in favor of Deutsche Rentenversicherung Oldenburg-Bremen and overturned the contrary decisions of the lower courts.

Flat-rate energy allowance paid to employees is taxable

In 2022, the plaintiff received an energy price allowance of EUR 300 from his employer. The defendant tax office took this into account as taxable wages in the income tax assessment for 2022. The claimant argued that the flat-rate energy allowance was not taxable income. It was a subsidy from the state that had no connection to his employment relationship. Furthermore, his employer had merely acted as an agent for the payment of the subsidy.

The Münster Fiscal Court dismissed the case. The legislator has constitutively allocated the energy price allowance to income from employment. It is therefore no longer necessary to establish a connection with the employee's own work performance. Furthermore, the relevant section of the Income Tax Act is also constitutional.

The tax court allowed an appeal to the Federal Fiscal Court. The court case was regarded as a model case by both taxpayers and the tax authorities. Thousands of objection proceedings are still pending at tax offices throughout Germany regarding the taxation of the energy price allowance. It is not yet known whether the appeal has been lodged by the plaintiff.

Note

The tax liability of the energy price lump sum does not apply to **flat-rate taxed wages**. In this case, the flat-rate energy tax is not taxed. However, this only applies if the employee has only received wages taxed at a flat rate (e.g. mini-jobs) throughout 2022. If, in addition to the flat-rate taxed salary, other eligible **income** was earned **from agriculture and forestry**, **business** or **self-employment**, the energy price lump sum is included in **other income**.

For **pensioners,** the energy price lump sum is deemed to be **income from other sources**, as the payment was made by Deutsche Rentenversicherung or the agricultural pension fund. Pensioners who received the energy price lump sum for pensioners in December 2022 from the Deutsche Post AG Pension Service or the Deutsche Rentenversicherung Knappschaft-Bahn-See pension insurance fund or the agricultural pension fund do not have to declare the amount paid out in their income tax return for 2022.

For VAT payers

Payments due to warnings for copyright infringements are subject to VAT

Payments made to an entrepreneur based on copyright or competition law warnings to enforce a claim for injunctive relief are to be qualified under VAT law as remuneration in the context of a VAT able exchange of services between the entrepreneur and the infringer warned by him.

The taxable consideration for the warning letter includes all payments received for the service. The designation of the payments to be made in the warning letter or whether the payments can be claimed as damages is irrelevant for the classification as taxable remuneration. Rather, the decisive factor is whether the payments serve to indemnify the person issuing the warning letter and thereby avoid legal proceedings under copyright law. This was the decision of the Berlin-Brandenburg Fiscal Court.

Note

If the warning is unjustified, an open tax statement is probably a case of unjustified tax statement (following Section 14c (2) UstG). If compensation is claimed as a result of a justified warning, this is not taxable as there is no exchange of services.

For inheritance taxpayers

No pro rata acquisition of a property belonging to the estate in the event of acquisition of a co-heir's share for consideration

The Federal Fiscal Court had to decide whether the acquisition of a share in a community of heirs is equivalent to the pro rata acquisition of the property in the estate.

In the proceedings, the plaintiff was part of a community of heirs consisting of three heirs. The assets of the community of heirs included real estate. The plaintiff bought the shares of his two co-heirs and then sold the properties. The tax office considered the sale to be a taxable private disposal transaction.

The Munich Tax Court followed the opinion of the tax authorities in that it considered the acquisition of a share of the inheritance from the community of heirs for consideration to be an acquisition of the property belonging to the estate as private assets. As the now sole owner, he sells the property within no more than ten years of acquiring the inheritance share for consideration. In this respect, the capital gain is taxable (Section 23 (1) sentence 1 no. 1 EStG) insofar as it is attributable to the share acquired for consideration.

The Federal Fiscal Court has disagreed with this. The acquisition for consideration of a share in a community of heirs does not lead to the pro rata acquisition of a property belonging to the joint assets of the community of heirs.

Note

The Federal Fiscal Court has thus changed its case law and opposed the view of the tax authorities.

Labor law

Dismissal of a severely disabled person during the probationary period

The plaintiff, who has a degree of disability of 80, had been employed by the defendant municipality as an "employee in the building yard" since 01.01.2023 and was deployed in various columns of the building yard. The plaintiff was unable to work from the end of May. On 22.06.2023, the defendant employer terminated the employment relationship with effect from 31.07.2023.

The Cologne Labor Court ruled that the termination of the severely disabled employee during the probationary period with due notice was unlawful as it constituted discrimination on the grounds of disability. The termination of the employment relationship by the defendant is not effective. Even during the probationary period, the employer is obliged to carry out a preventive procedure in which the representative body for severely disabled employees and the integration office must be involved as early as possible as a preventive measure if difficulties arise in the employment relationship that could jeopardize this relationship. The employer did not do this in the case in dispute.

When does a formulation in a job advertisement discriminate against older applicants?

A 50-year-old applicant had received a rejection on his application as a salesperson at a petrol station operator. He subsequently filed a claim for compensation in the amount of 1,500 euros following the General Equal Treatment Act (AGG). The petrol station operator's job advertisement stated, among other things: "We are a young, dynamic team with gasoline in our blood and are looking for reinforcement." The applicant believed that the wording was an indication of age discrimination. "Young" referred to the age of the team members being sought. The employer, on the other hand, believed that the job advertisement did not contain an age requirement. Rather, the wording described the team.

The Mecklenburg-Vorpommern Regional Labor Court dismissed the claim and followed the employer's reasoning. It was an exaggerated, ironic, non-serious description of the vacant position in the form of an advertising slogan, not a description of the requirements for a potential applicant. The employer therefore did not advertise the position in its company in violation of the ban on age discrimination. Therefore, the applicant is not entitled to compensation for discrimination.

Unauthorized posting of pictures from the workplace can be grounds for dismissal

A cargo pilot had shared photos and videos of his work on social networks such as Instagram, Facebook and YouTube, even though the company had, among other things, a confidentiality obligation and certain consent requirements. The pilot had applied for and received approval for secondary employment under the heading "Promotion, modeling (blogger)". He therefore assumed that his publications were covered by this approval. For example, the pilot shared photos from the cockpit, of himself at work or in his service uniform. The employer then terminated his employment.

The Regional Labor Court found the dismissal to be effective. The unauthorized posting of pictures from the workplace constitutes good cause for dismissal. The employer is entitled to the right to his own image and words. The plaintiff violated this right through the postings. He also breached his comprehensive duty of confidentiality, as he did not have permission for such publications.

Accident while stopping to urinate - interruption of the insured journey to work

If an employee stops on the way to work on a forest path to relieve himself, this interrupts the insured route. If the vehicle starts to roll and the employee dies while trying to stop the rolling vehicle, this does not constitute an accident at work. This was the decision of the Baden-Württemberg State Social Court.

Miscellaneous

Free sample serving - No beer tax on beer produced by hobby brewers

The plaintiff is a hobby brewer. At an event at which hobby brewers were able to present the beer they produced and exchange experiences, the beer produced by the participants was offered for tasting free of charge. Seminars and lectures were also offered and the most popular beer was presented for tasting. Persons interested in the event could purchase an admission ticket on the organizer's website, which entitled them to participate in the event. The defendant main customs office instructed the plaintiff to inform the participants as organizers that they had to register the beer they produced for the event with the main customs office responsible for them for taxation beforehand.

However, the Düsseldorf Fiscal Court ruled that the levying of beer tax was not lawful in this case. Although the plaintiff in this case did not have a license to produce the beer in question, the beer he produced is tax-free. Beer that is produced by home and hobby brewers in their households exclusively for their own consumption and is not sold is exempt from tax up to a quantity of 2 hl per calendar year. The plaintiff produced the beer consumed by the other participants exclusively for his own consumption. He also did not sell the beer.

Legislation

Minimum wage in geriatric care increases

The minimum care wage increased on 01.05.2024: In future, auxiliary staff will receive at least 15.50 euros gross per hour, qualified care assistants 16.50 euros and care professionals 19.50 euros. A further increase in the minimum wage in geriatric care will then follow on 01.07.2025.

Pensions to rise significantly again from July

Pensions will increase by 4.57% as of 01.07.2024. The federal government has passed a corresponding ordinance.

Ordinance on the technical implementation of the basic register for companies approved by the cabinet

The Federal Government has approved the draft ordinance on the register of basic company data (UBRegV) submitted by the Federal Minister of Economics and Climate Protection, the Federal Minister of Justice and the Federal Minister of Finance.

The primary goal of the basic register is to implement the once-only principle, an elementary component of register modernization in Germany: companies should only have to provide their data and documents to the administration once; multiple notifications to different registers and authorities should gradually be replaced by register queries and inter-authority data exchanges. In addition, further use cases are planned for the basic register, for example in the area of identity management or in the context of the Online Access Act (OZG), which are to be developed in later expansion stages. In the long term, the basic register is expected to save hundreds of millions of euros per year.

Tax/social security dates June/July 2024

Tax type		Maturity	
Income tax, church tax, solidarity surcharge		10.06.2024[1]	10.07.2024[2]
Income tax, church tax, solidarity surcharge		10.06.2024	not applicable
Corporation tax, solidarity surcharge		10.06.2024	not applicable
Value added tax		10.06.2024[3]	10.07.2024[4]
End of the grace period for the above types of tax in the event of payment by:	Bank transfer[5]	13.06.2024	15.07.2024
	Check[6]	10.06.2024	10.07.2024
Social insurance[7]		26.06.2024	29.07.2024
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 quarterly payers for the past calendar quarter.

3 For the previous month, for the month before last in the case of 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 without 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 If payment is made by check, please note that 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. 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 24.06.2024/25.07.2024, 0 a.m. in each case). Regional peculiarities regarding due dates may need to be considered. 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.